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CHARLES ELMORE
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In the Supreme Court of the United States

OCTOBER TERM, 1929.

No. 12, ORIGINAL. IN EQUITY.

THE STATE OF CONNECTICUT,
Complainant,

v.

THE COMMONWEALTH OF MASSACHUSETTS,
Defendant.

MOTION OF THE COMMONWEALTH OF MASSACHUSETTS TO AMEND ANSWER TO THE BILL OF COMPLAINT.

JOSEPH E. WARNER,
Attorney General of Massachusetts.

BENTLEY W. WARREN,
Special Assistant Attorney General of Massachusetts.

GERALD J. CALLAHAN,
Assistant Attorney General of Massachusetts.

R. AMMI CUTTER,
Assistant Attorney General of Massachusetts.

In the
Supreme Court of the United States

OCTOBER TERM, 1929.

No. 13, ORIGINAL. IN EQUITY.

THE STATE OF CONNECTICUT,
Complainant,

v.

THE COMMONWEALTH OF MASSACHUSETTS,
Defendant.

NOTICE.

To the State of Connecticut, the complainant herein; to the Honorable Benjamin W. Alling, Attorney General of said State; and to Ernest L. Averill, Esq., and to Benedict M. Holden, Esq., both of Hartford, Connecticut, of counsel in said case:

Please take notice that at the incoming of the Supreme Court of the United States at twelve o'clock noon at the Capitol Building in the City of Washington, District of Columbia, on Monday, November 4, 1929, or as soon thereafter as counsel can be heard, the above-named defendant will appear by its attorneys and present to said court the attached motion for leave to file a motion to amend the defendant's answer.

THE COMMONWEALTH OF MASSACHUSETTS,

By JOSEPH E. WARNER,
Attorney General of Massachusetts.

BENTLEY W. WARREN,
Special Assistant Attorney General of Massachusetts.

GERALD J. CALLAHAN,
Assistant Attorney General of Massachusetts.

R. AMMI CUTTER,
Assistant Attorney General of Massachusetts.

THE STATE OF CONNECTICUT.

COUNTY OF

Service of the above notice by the delivery to me of a copy thereof, together with a copy of a motion for leave to file and a motion to amend the defendant's answer is hereby acknowledged this day of October, 1929.

In the
Supreme Court of the United States

OCTOBER TERM, 1929.

No. 13, ORIGINAL. IN EQUITY.

THE STATE OF CONNECTICUT,
Complainant,

v.

THE COMMONWEALTH OF MASSACHUSETTS,
Defendant.

MOTION OF THE COMMONWEALTH OF MASSACHUSETTS FOR LEAVE TO FILE MOTION TO AMEND ANSWER TO THE BILL OF COMPLAINT.

And now comes the Commonwealth of Massachusetts, by Joseph E. Warner, its Attorney General, and moves this Honorable Court for leave to file the attached motion to amend the answer heretofore filed by the said Commonwealth in the above-entitled action.

THE COMMONWEALTH OF MASSACHUSETTS,

By JOSEPH E. WARNER,
Attorney General of Massachusetts.

BENTLEY W. WARREN,
Special Assistant Attorney General of Massachusetts.

GERALD J. CALLAHAN,
Assistant Attorney General of Massachusetts.

R. AMMI CUTTER,
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In the Supreme Court of the United States

OCTOBER TERM, 1929.

No. 13, ORIGINAL. IN EQUITY.

THE STATE OF CONNECTICUT,
Complainant,

v.

THE COMMONWEALTH OF MASSACHUSETTS,
Defendant.

MOTION OF THE COMMONWEALTH OF MASSACHUSETTS TO AMEND ANSWER TO THE BILL OF COMPLAINT.

And now comes the Commonwealth of Massachusetts, by Joseph E. Warner, its Attorney General, and moves this Honorable Court for leave to amend the answer heretofore filed by the said Commonwealth in the above-entitled action by leave of court in the following particulars.

1. By striking out that portion of paragraph 5 of the answer beginning with the words "But the defendant", in the twenty-third line on page six of the answer, and ending with the words "more fully described," in the first and second lines on page seven of the answer, and inserting in place thereof the following:

"But the defendant says

(*a*) that no such permit from Congress, the War Department, the Secretary of War, or the Chief of Engineers is necessary for the erection of any structures as such in a non-navigable river or stream.

(*b*) that the United States Government, the War Department thereof, the Secretary of War, and the Chief of Engineers have jurisdiction over the diversion of waters from non-navigable tributaries of navigable streams solely because such a diversion may result in the obstruction of the navigable capacity of a navigable stream into which such non-navigable stream may flow.

(*c*) that it is the duty of the Secretary of War and the Chief of Engineers to grant a permit for a diversion from a non-navigable stream, unless such diversion will result in an unreasonable obstruction of a navigable stream or will unreasonably alter or modify the capacity of the channel of a navigable water of the United States. The defendant admits that at the time of the filing of the bill of complaint in the proceedings before this Honorable Court the defendant had not obtained permission from the War Department or from the office of the Secretary of War of the United States to do any acts actually done or contemplated to be done by the Commonwealth of Massachusetts, referred to in the bill of complaint, for which any permit may be by law required.

The defendant avers, however, —

(*a*) That on November 30, 1927, the Metropolitan District Water Supply Commission made a formal application for a permit to divert water from the Swift river and the Ware river in accordance with the terms of the two acts hereunto annexed and marked 'Appendix A'. No permit was requested for permission to erect any structures in the Swift river or in the Ware river, inasmuch as the said rivers are non-navigable streams and the jurisdiction of the War Department does not extend to regulation of the waters of such streams unless there is such a diversion or use of the waters of such streams as will unreasonably alter or modify the condition or capacity

of the channel of a navigable water of the United States into which such non-navigable streams eventually flow.

(*b*) That after extensive consideration and after public hearings by representatives of the War Department, it was found on March 14, 1928, upon recommendation of the Chief of Engineers and with the approval of the Secretary of War, that the proposed diversion of the waters of the Ware river in excess of 85,000,000 gallons per day (131 cubic feet per second) would have no adverse effect on the navigable capacity of the Connecticut river, and the War Department informed the applicant that no objection would be interposed by the department to the diversion of all flood waters in excess of 85,000,000 gallons per day for the period between October fifteenth and June fifteenth of each year. The application of the Metropolitan District Water Supply Commission of Massachusetts, together with the sixth endorsement thereupon by the Chief of Engineers and the Secretary of War and a copy of a communication submitted to and received by the Metropolitan District Water Supply Commission from the United States Engineer's office at Providence, Rhode Island, are hereunto annexed, marked 'Appendix B,' the said appendix being hereby referred to and made a part hereof.

(*c*) That after extensive consideration and after public hearings it was found by the War Department, upon recommendation of the Chief of Engineers and with the approval of the Secretary of War, on May 11, 1929, that a certain proportion of the diversion of the waters of the Swift river might properly take place without causing any unreasonable, appreciable, or substantial alteration or modification of the condition of, or of the navigable capacity of, the channel of the navigable portion of the Connecticut river, and the Metropolitan District Water Supply Commission

was informed that the War Department would interpose no objection to such a diversion within certain limits. A copy of the application for permission to divert certain waters of the Swift river filed by the Metropolitan District Water Supply Commission, together with the seventh endorsement of the War Department thereon, and a copy of the communication received by the Metropolitan District Water Supply Commission from the office of the District Engineer with respect to said diversion are hereunto annexed and marked 'Appendix C,' to which reference is herein made and which is made a part hereof."

2. By striking out that portion of paragraph 11 of the answer beginning with the words "And further answering," in the fourteenth line on page ten of the answer, and ending with the words "the Secretary of War," in the twenty-second line on page eleven of the answer, and inserting in place thereof the following:

"And further answering the defendant avers that in view of the determination of the Secretary of War, upon recommendation of the Chief of Engineers, that within the limits stated in the annexed findings of the department the proposed diversion of certain of the flood waters of the Ware river and of certain waters of the Swift river contemplated by the said defendant, the Commonwealth of Massachusetts, will have no adverse or injurious effect upon the navigability of the Connecticut river, and in view of the findings of the Chief of Engineers, approved by the Secretary of War, set forth in Appendices 'B' and 'C', attached hereunto and made a part hereof, no question of whether or not any act done or contemplated to be done by the Commonwealth of Massachusetts has or will have an adverse or injurious effect upon the navigability of the Connecticut river is here relevant or

material, in the absence of proof that the Commonwealth of Massachusetts has diverted or actually proposes to divert more water than it is permitted to divert by the terms of the orders of the War Department, inasmuch as the determination of such issues and the protection of the capacity of navigable streams in the interest of interstate and foreign commerce has been committed by the Constitution of the United States to the Congress, which has delegated the greater part of its administrative powers in that behalf to the War Department, to the Secretary of War, and to the Chief of Engineers. The defendant, however, avers that neither the diversions authorized by the Massachusetts legislation, annexed hereunto and made a part hereof and marked 'Appendix A', nor the said diversions as modified in accordance with the terms of the permission contained in the War Department's orders, annexed hereunto and made a part hereof and marked 'Appendix B' and 'Appendix C', will in any way unreasonably alter or modify the navigable capacity of the navigable portion of the Connecticut river; nor will the said diversions either as authorized by the Massachusetts legislation or as modified by the War Department's orders aforesaid cause any damage whatsoever to the health, welfare, safety, or property of the State of Connecticut or the citizens thereof."

3. By striking out so much of paragraph fifth of the answer as begins with the words "Inasmuch as," in the ninth line on page thirty of the answer, and as ends with the words "has no jurisdiction," in the twenty-first line on page thirty of the answer, and inserting in place thereof the following:

"Inasmuch as the duty of protecting the navigability of navigable waters of the United States and

the regulation of obstructions and diminutions of the navigable capacity of such waters has been committed, consistently with the provisions of the Constitution of the United States, by the Congress of the United States in large part to the Secretary of War, the Chief of Engineers, and the War Department, and in view of the determinations and findings of the Chief of Engineers, with the approval of the Secretary of War, as hereinbefore set forth and as more fully set out in said findings in Appendices 'B' and 'C', hereunto annexed and made a part hereof, within the limits provided in said findings, the issue of the effect of the proposed diversions upon the navigability of the Connecticut river is not open in these proceedings, in the absence of proof that the Commonwealth of Massachusetts has diverted or actually proposes to divert more water than it is permitted to divert by the terms of the orders of the War Department. The defendant, however, avers that neither the diversions authorized by the Massachusetts legislation, annexed hereunto and made a part hereof and marked 'Appendix A', nor the said diversions as modified in accordance with the terms of the permission contained in the War Department's orders, annexed hereunto and made a part hereof and marked 'Appendix B' and 'Appendix C', will in any way unreasonably alter or modify the navigable capacity of the navigable portion of the Connecticut river; nor will the said diversions either as authorized by the Massachusetts legislation or as modified by the War Department's orders aforesaid cause any damage what-

soever to the health, welfare, safety, or property of the State of Connecticut or the citizens thereof."

THE COMMONWEALTH OF MASSACHUSETTS,

By JOSEPH E. WARNER,
Attorney General
Of the Commonwealth of Massachusetts.

BENTLEY W. WARREN,
Special Assistant Attorney General
Of the Commonwealth of Massachusetts.

GERALD J. CALLAHAN,
Assistant Attorney General
Of the Commonwealth of Massachusetts.

R. AMMI CUTTER,
Assistant Attorney General
Of the Commonwealth of Massachusetts.

APPENDIX B

NOVEMBER 30, 1927.

WARE RIVER DIVERSION

War Department, United States Engineer Office, 13th Floor, Custom House, Boston, Mass.

GENTLEMEN: — The letter from your department, signed by S. A. Cheney, Colonel, Corps of Engineers, District Engineer, dated November 22, 1927, directed to this Commission in reference to the contemplated diversion of the waters of the Swift and Ware Rivers for the purpose of procuring an additional water supply for the Metropolitan District received.

The diversion of waters referred to is of the Ware River authorized by Chapter 375 of the Acts of 1926 (Massachusetts) and of the Swift River authorized by Chapter 321 of the Acts of 1927 (Massachusetts), both rivers being entirely within the State of Massachusetts and being non-navigable. Copies of both of these Acts are attached hereto.

In accordance with the letter from your department and as suggested by Colonel Cheney in a recent conference, this Commission hereby makes formal application for a permit for the diversion of the waters of the Ware River in accordance with the terms of Chapter 375 of the Acts of 1926 which provides so far as said diversion is concerned as follows:

> SECTION 1, Paragraph 2 — "The commission, on behalf of the commonwealth, shall forthwith for the purpose of extending and increasing the water supply of the metropolitan water system, and of such cities and towns not members of the metropolitan water district as may hereafter require water from said system, divert into the Wachusett reservoir of said district the flood waters, as defined in section four, of the Ware river at a point in the town of Oakham or the

town of Barre not more than one mile from the bridge of the Boston and Albany railroad crossing said river in the village of Coldbrook, and construct as a part of the metropolitan water system, such works as may be necessary for such extension and increase, and all structures and appurtenances incidental or complementary thereto; provided, that said flood waters shall not be so diverted between May thirty-first and December first in any year unless such diversion be first approved by the state department of public health."

SECTION 4, Paragraph 1 — "For the purposes of this act, the flood waters of the said Ware river which the commission is authorized to divert as provided in section one are hereby defined to be the waters thereof at and above the point of diversion established under section one in excess of a flow of eighty-five million gallons a day, meaning thereby that on any day when the natural flow of said river is less than eighty-five million gallons no water shall be diverted."

This matter was taken up by Mr. Winsor, Chief Engineer of this Commission, with Major Fowler of the Providence office early in the year, and it was our impression that if anything further was required on the part of the War Department, we would be notified. Work has been going on since that time and in view of the immediate necessity of the Boston Metropolitan District for an additional water supply, and the serious danger of a water shortage unless this work is prosecuted to the earliest possible completion, we cannot too strongly urge that a permit be immediately granted.

Respectfully,

METROPOLITAN DISTRICT WATER
SUPPLY COMMISSION,

By (Sgd) DAVIS B. KENISTON,
Chairman.

Incls:
DBK : CH

COPY

7510 (Mass. Metro. Dist. Water Comm.) 1. Subject: Application for permission to divert water from Ware River, Mass.

6TH IND.

Office, C. of E. March 6, 1928. — To the Secretary of War.

1. The Metropolitan District Water Supply Commission of the State of Massachusetts has made application for permits to divert excess waters from Ware River and the major part of the flow of the Swift River for an additional water supply for the Boston Metropolitan District. The particular application under consideration in this indorsement refers to the excess waters of the Ware River.

2. Both rivers lie wholly within the State of Massachusetts. They rise in the central part of the State, flow in a southerly direction and uniting with the Quaboag River, form the Chicopee River. The latter flows westward to the Connecticut River.

3. Both applications contemplate the transfer from the Connecticut basin of a portion of the waters naturally tributary thereto, and their diversion through a tunnel to another watershed. In the case of the Swift River it is proposed to construct a storage reservoir and a very large proportional diversion is requested. The application for the Swift River requires further detailed study to arrive at a close determination of its effects on the navigable capacity of the Connecticut. These studies have not progressed sufficiently to enable me to state at this time the amount of allowable diversion or exact conditions under which diversion may be possible without adverse effect on the Connecticut. No storage is proposed in the case of the Ware River and no diversion except when the flow is in excess of 85,000,000 gallons per day (about 131 cubic feet per

second), with the proviso that no water shall be diverted between May 31 and December 1 in any year unless first approved by the State Department of Public Health. The proposed Swift River diversion presents a complicated question. The Ware River application involves no unusual difficulties.

4. The drainage area of the Swift River above the lower end of the reservoir, is about 186 square miles. The drainage area of the Ware above the proposed point of diversion is about 98 square miles. The drainage area of the Connecticut is about 11,000 square miles.

5. Objections to the proposed diversion have been presented both in writing and orally by representatives of the State of Connecticut, the City of Hartford and the Hartford and New York Transportation Company. The Division Engineer has raised the question of the adverse effect on power development at Enfield Rapids, Conn. The State of Connecticut has instituted an action in the Supreme Court of the United States to restrain the taking of any part of the waters of the Ware, Swift and other rivers, basing its contention only incidentally on adverse effects on navigable capacity of the Connecticut.

6. After a study of the Ware River application had been made, the District Engineer of the Providence District held a public hearing at Springfield, on the 9th ultimo to give the States of Massachusetts and Connecticut and all interested parties opportunity to present their views. At the hearing no attempt was made by either side to controvert the finding set forth in the notice of hearing that the navigable depth of the Connecticut will not be affected by diversion between October 15 and June 15 except to the extent of an average of 0.6 of a day per year. . . .

7. The records of discharge of the Ware River for the years 1913–1926 indicate that a volume of flow in excess

of 131 cubic feet per second at the proposed point of diversion did not occur on any day between October 15 and June 15 of those years when the Hartford gauge at 8 a.m. was below 2 feet. The same records indicate that a volume of flow in excess of 131 cubic feet at the proposed point of diversion has occurred only on an average of 0.7 of a day per year when the Hartford gauge at 8 a.m. was below 3 feet. The maximum amount thus capable of diversion occurred on December 15, 1924, when the volume of flow was 170 cubic feet per second and the gauge reading at Hartford was 2.7 feet. The possible amount that could then have been diverted was 39 cubic feet per second. The effect on gauge heights or navigable depths by the diversion of that amount would be imperceptible. These flashy and insignificant occurrences on the Ware are not reflected by the gauge at Hartford as much as are wind and tide effects. . . .

8. . . . In my judgment the use of excess waters from the Ware, as outlined above, will not have any injurious effect on navigation irrespective of any diversion which may be authorized from the Swift. Furthermore a proper regulation of the Swift River by storage of flood waters may be actually beneficial by making possible an increase of flow during dry periods. By careful and economical usage flood stages may be slightly lowered, navigable depth slightly benefited and diversion of reasonable amounts for water supply made feasible.

9. The applicant is very desirous of a decision concerning the Ware River application as soon as possible. So far as the interests committed to this Department are concerned, I see no reason for deferring action in the case. In my opinion the proposed diversion of waters in excess of 85,000,000 gallons per day (131 cubic feet) will have no adverse effect on the navigable capacity of the Connecticut River. In view of the controversy before the Supreme Court, it seems inadvisable

to issue a formal permit for the present but to inform the applicant that no objection will be interposed by the War Department to the diversion of the flood waters exceeding 85,000,000 gallons per day for the period October 15 to June 15, of each year. Approval of this course of action is recommended.

(Signed) EDGAR JADWIN
Major General,
Chief of Engineers.

Approved March 14, 1928

(Signed) DWIGHT F. DAVIS,
Secretary of War.

War Department
United States Engineer Office
Providence, R. I.

Refer to file No. Comm. 64/1-104 March 19, 1928.

Metropolitan District Water Supply Commission, The Commonwealth of Massachusetts, 24 School Street, Boston, Massachusetts.

Gentlemen: — Referring to your application of November 30, 1927, for federal authority for the diversion of the flood waters of the Ware River for an additional water supply for the Boston Metropolitan District, this office has been directed by the Chief of Engineers to inform you that no objection will be interposed by the War Department to the diversion of the flood waters of the Ware River exceeding 85,000,000 gallons per day for the period October 16 to June 15 each year.

For and in the absence of Colonel S. A. Cheney, Corps of Engineers, District Engineer.

Very respectfully,

THOS. R. McELROE (Sgd.)
Chief Clerk.

APPENDIX C

NOVEMBER 30, 1927.

SWIFT RIVER DIVERSION

War Department, United States Engineer Office, 13th Floor, Custom House, Boston, Massachusetts.

GENTLEMEN: — The letter from your department signed by S. A. Cheney, Colonel, Corps of Engineers, District Engineer, dated November 22, 1927, directed to this Commission in reference to the contemplated diversion of the waters of the Swift and Ware Rivers for the purpose of procuring an additional water supply for the Metropolitan District received.

The diversion of waters referred to is of the Ware River authorized by Chapter 375 of the Acts of 1926 (Massachusetts) and of the Swift River authorized by Chapter 321 of the Acts of 1927 (Massachusetts), both rivers being entirely within the State of Massachusetts and being non-navigable. Copies of both of these Acts are attached hereto.

In accordance with the letter from your department and as suggested by Colonel Cheney in a recent conference, this Commission hereby makes formal application for a permit for the diversion of the waters of the Swift River in accordance with the terms of Chapter 321 of the Acts of 1927 which provides so far as said diversion is concerned as follows:

> SECTION 1, 1st Paragraph — "The metropolitan district water supply commission, established by chapter three hundred and seventy-five of the acts of nineteen hundred and twenty-six, hereinafter referred to as the commission, on behalf of the commonwealth, shall forthwith, for the purpose of adding to, extending and further developing the additional

sources of water supply of the metropolitan water system provided for in said chapter three hundred and seventy-five, divert into the Wachusett reservoir of the metropolitan water system the waters of the Swift River, and of Beaver brook, a tributary of the Ware river, by the construction of an extension, to the Swift river, of the aqueduct or tunnel between the Wachusett reservoir and the Ware river at or near Coldbrook provided for in said chapter three hundred and seventy-five, and by the construction of a temporary diversion dam as may be required at a point on the Swift river below the confluence of the east and middle branches or at a point on the east branch near the village of Greenwich, and ultimately by the construction of a dam across the Swift river at or near the boundary line between the towns of Ware and Enfield, and of a dam across Beaver Brook at or near said boundary line, thereby creating a storage reservoir in the Swift river valley. No water shall be diverted or stored in any calendar day when the flow of the Swift river at or just above the village of Bondsville in the towns of Palmer and Belchertown is less than twenty million gallons; and there shall be discharged from any storage created by the commission above said village a sufficient amount of water to maintain, so far as such storage will allow, a flow of said river at said village of not less than twenty million gallons in each calendar day."

This matter was taken up by Mr. Winsor, Chief Engineer of this Commission, with Major Fowler of the Providence office early in the year, and it was our impression that if anything further was required on the part of the War Department, we would be notified. Work has been going on since that time and in view of the immediate necessity of the Boston Metropolitan District for an additional water supply, and the serious

danger of a water shortage unless this work is prosecuted to the earliest possible completion, we cannot too strongly urge that a permit be immediately granted.

Respectfully,

METROPOLITAN DISTRICT WATER
SUPPLY COMMISSION,

By (sgd) DAVIS B. KENISTON,
Chairman.

Encls.
DKB: CH (Pw)

NOVEMBER 30, 1927.

WARE AND SWIFT RIVER DIVERSIONS.

War Department, United States Engineer Office, 13th Floor, Custom House, Boston, Massachusetts.

GENTLEMEN: — Supplementing the applications of November 30 from this Commission to the War Department for permits for the Swift and Ware River diversions, your attention is directed to the correspondence now in your files between Major R. F. Fowler, Corps of Engineers, District Engineer at Providence, and Frank E. Winsor, Chief Engineer of this Commission, covering the period from January 25 to March 9, 1927. This Commission inferred from this correspondence that the War department had taken or would take the view that the proposed diversion from the Ware River would be no detriment to the navigable depth of the Connecticut River and that the proposed diversion from the Swift River would not be objected to unless or until the War Department, after taking into account various other factors influencing the flow of the Connecticut, such as storage held and released by mills, power companies, etc. in ponds and storage reservoirs, should demonstrate that such diversion would reduce the navigable depth, in which case the War Department might require greater quantities to be released from time to time during the dry season.

The diversion of both the Swift and Ware Rivers is essentially one project so far as a practical and economical development of an additional water supply for the Boston Metropolitan District is concerned.

The Ware River diversion in effect skims off the flow as it occurs in excess of 85,000,000 gallons, which is equivalent to 1.34 cubic feet per second per square mile from the approximate 98 square miles of drainage area affected (prior to a recent survey this area was assumed

to be about 100 square miles). This flow of 1.34 cubic feet per second unaffected by the diversion is several times the average dry weather flow of the Ware River.

The Swift River diversion is from about 186 square miles and there is guaranteed a flow in the Swift River at Bondsville, about five miles below the proposed Swift River Reservoir, of 20,000,000 gallons a day, the drainage area at Bondsville being about 195 square miles. The guaranteed flow is 0.16 cubic feet per second per square mile. The drainage area of 186 square miles is 1.71% of the drainage area of the Connecticut River of 11,400 square miles and from this 186 square miles sufficient water is released to insure a flow of 0.16 cubic feet per second per square mile from 195 square miles of drainage area. There will be no reduction but a slight increase in the flow of the Swift River in the driest times and during the usual dry season the average reduction in flow of the Connecticut River will correspond to a reduction of drainage area of that river not greater than one per cent. The effect on the flow of the Connecticut River of so small a diversion will, it is believed, be immeasurable so far as reducing the navigable depth is concerned.

During the past year the Commission has expended a large amount of money on the Ware and Swift River projects, including the cost of sinking of shafts preparatory to the construction of the tunnel which is necessary for making available the flood waters of the Ware River. Satisfactory bids for the construction of the tunnel itself were received on November 18. This contract if awarded in the immediate future and if completed in the time specified will permit the diversion of Ware River water into the Wachusett Reservoir in the winter or spring of 1931, before which time no water can be diverted. To suspend operations at this time would not only involve the Commonwealth in a heavy financial loss, but would also delay procuring the additional supply of water badly needed by the Metropolitan District at the earliest possible date.

The Swift River diversion cannot be begun until the tunnel is extended from the Ware River to the Swift River and it is estimated that the earliest time at which water could be diverted from the Swift River would be during 1933.

There is inclosed herewith preliminary blueprint of plan, Accession 617, being a general plan of the Metropolitan Water Supply.

Respectfully,

METROPOLITAN DISTRICT WATER
SUPPLY COMMISSION,

By (Sgd) DAVIS B. KENISTON,
Chairman.

FEW : AW
Inclosure

COPY

7510 (Mass. Metro. Dist. Water Supply Com.) 2. Subject: Swift River Diversion.

7TH IND.

Office, C. of E., May 9, 1929. — To the Secretary of War.

1. On November 30, 1927, the Metropolitan District Water Supply Commission of Boston, at the written suggestion of the District Engineer, Providence District, made a formal application for a permit to divert water from the Swift River, Massachusetts, in accordance with the terms of Chapter 321 of the Acts of 1923 of that State. On the same date, the Commission also made application for a permit to divert water from the Ware River, Massachusetts, in accordance with the terms of Chapter 375 of the State Acts of 1926.

2. Those rivers rise in the central region of Massachusetts and flow southerly and westerly to a junction forming the Chicopee River which flows westerly and empties into the Connecticut at a point about 9.5 miles north of the boundary between Massachusetts and Connecticut.

3. On March 14, 1928, the Secretary of War approved a recommendation of the Chief of Engineers that the applicant be informed that no objection would be interposed by the War Department to the diversion from the Ware River of the flood waters exceeding 85,000,000 gallons per day for the period October 15 to June 15, of each year. This approval was given by the Secretary of War with the understanding that such action would not affect the consideration of the Swift River application.

4. The Swift River application contemplates the storage of its flow and its possible diversion with the exception of 20,000,000 gallons of water per day into the Wachusett Reservoir, situated about 30 miles eastward

of the point of diversion and in another watershed. Storage would be provided first by a temporary dam to be constructed below the confluence of the east and middle branches of the Swift River or at a point on the east branch near the village of Greenwich, and ultimately by the construction of a dam across the Swift River at or near the boundary of Ware and Enfield, and of a dam across Beaver Brook at or near said boundary line.

5. No permit is required for any of the diversion structures as the Swift River and its various branches, as well as Beaver Brook, are non-navigable streams. The jurisdiction of the War Department in cases of this kind begins when the appropriation or regulation of the waters of a non-navigable tributary is of such extent as "to alter or modify the . . . condition or capacity of . . . the channel of any navigable water of the United States". Since such alteration or modification without previous recommendation and authorization of the Chief of Engineers and the Secretary of War is unlawful, the War Department is interested in determining whether the amount of such appropriation or regulation would probably demand institution of Federal proceedings to preserve substantially the navigability of navigable waters.

6. This particular case has been studied in great detail during the past 17 months by the District Engineer at Providence, the Division Engineer at New York and the Office of the Chief of Engineers. Full opportunity has been given to the representatives of the Metropolitan District Water Supply Commission and of the State of Connecticut and other interested parties, to present data and to inform themselves of the progress of these studies.

7. The State of Connecticut presented objections based on both legal and engineering grounds. All such legal questions have been answered so far as concerns the interests entrusted to the Department. No attempt has been made to answer the fundamental questions of

law involved as to the right to divert water from one watershed to another, inasmuch as the State of Connecticut has instituted an action in the Supreme Court of the United States to restrain the taking of any part of the water of the Ware, Swift and other rivers. It is believed that the decision of such issues should be left to that tribunal. The objections which have been raised on engineering or navigation grounds are referred to later in this indorsement.

8. The watershed of the Connecticut River above the Massachusetts-Connecticut boundary is 9,915 square miles. The drainage area of the Swift River involved in this application is approximately 186 square miles. The mean annual discharge of the Connecticut River at the State Line is about 17,000 cubic feet per second and the mean annual discharge of the Swift River at the proposed dam site, about 300 cubic feet per second. The discharges of both rivers are affected and regulated to a considerable extent by mill and power dams which temporarily store water to suit occupational uses. The stage of the river at Hartford is indicated by a gauge at that point. The surface elevations are affected by tide and wind. The best information of normal flow conditions of the Connecticut River is afforded by the records of the United States Geological Survey gauge at Sunderland, Massachusetts, located on that river about as far above Hartford as the site of the proposed dam on the Swift River. Study of the gauge records indicate that critical stages normally occur between June 15 and November 15. The critical period for navigation is taken as from June 1 to November 30.

9. The legislation of the State of Massachusetts prescribes that there shall be maintained a minimum flow of water of 31 cubic feet per second at Bondsville at a gauge located on the Swift River below the site of the proposed impounding dam, and where the tributary drainage area is 8 square miles in excess of that above that dam.

10. The results of the studies made by and under the direction of this office were submitted for comment to the representatives of the Metropolitan Water Supply District of Boston and to the representatives of the State of Connecticut. Both groups were in this office many times in discussions and conferences on both the legal phases and the navigation features of the case. In general, the representatives of Massachusetts indicated originally the opinion that the Office of the Chief of Engineers was magnifying the effect on navigation of the proposed appropriation of water in excess of 31 cubic feet per second. They stressed the desirability of early action by the Department to define the limits beyond which Massachusetts could not appropriate water without violating the provisions of the River and Harbor Act of March 3, 1899. On the other hand, the representatives of the State of Connecticut claimed that the proposals of the Department would not assure a 2-foot stage on the Hartford gauge; furthermore, that the maintenance of a 3-foot gauge rather than a 2-foot gauge was a better measure of the navigable capacity of the Connecticut River. Principally, however, the representatives of Connecticut strongly urged against any action positive or negative or inferential which permitted or which would permit or acquiesce to any degree in any diversion from the watershed of the Connecticut River to any other watershed.

11. The applicant is very desirous of obtaining a definite statement as to the limits of appropriation of water from the non-navigable Swift River which may be possible without substantially altering the condition or capacity or the channel of the navigable Connecticut River. In addition to the exhaustive study of the engineering data pertinent to the interests committed to the War Department, this office has taken into consideration the possible bearing upon Department action in this matter of the decisions of the Supreme Court in the cases of the United States *vs.* Rio Grande Dam

Irrigation Company and of the State of Wisconsin and other states *vs.* the State of Illinois and Sanitary District of Chicago, both of which involve questions regarding diversions affecting navigable waters. In the action hereinafter suggested, it is felt that the proposed position of the War Department will in no way prejudice the litigation now pending before the Supreme Court.

It is recommended that the applicant be informed as follows:

(a) It is the duty of the War Department to institute proceedings to preserve the substantial navigability of navigable waters of the United States when the appropriation or regulation of the waters of a non-navigable tributary affects, substantially alters or modifies the condition or capacity of the channel of a navigable water.

(b) The War Department is unwilling to admit that the appropriation of water from the Swift River to the extent proposed in this application might not, on occasion, have an appreciable effect on the navigable capacity of the Connecticut River.

(c) Limited amounts of water may be appropriated from the Connecticut River basin above the Connecticut-Massachusetts State Line, without substantially diminishing the navigability of that stream within the limits of present navigability.

(d) It is found that a discharge of 4,900 cubic feet per second at Sunderland, Massachusetts, corresponds to average lower low tide gauge height of 2.1 at Hartford, Connecticut and that a discharge of 4,650 cubic feet per second at Sunderland corresponds to an average lower low tide gauge height of 2.0 at Hartford.

(e) From the studies of past records it appears there will be no substantial alteration or modification of the condition or navigable capacity of the channel of the navigable portion of the Connecticut River if the flow of water from the Swift River as provided in

the terms of Chapter 321, of the Acts of 1927 (Massachusetts) be augmented during the critical period from June 1 to November 30, both inclusive, so that the measured rate of discharge on the Swift River shall be 70 cubic feet per second on such days as the United States Geological Survey gauge at Sunderland, Massachusetts indicates the discharge of the Connecticut River at that point to be less than 4900 cubic feet per second and more than 4650 cubic feet per second and shall be further augmented so that the measured rate of discharge past the impounding dam on the Swift River shall be 110 cubic feet per second on such days as the Geological Survey gauge at Sunderland Massachusetts indicates the discharge on the Connecticut River at that point to be 4650 cubic feet per second or less.

(f) The rates of discharge set forth in subparagraph (e) are subject to review based on more complete data which may become available in the future.

12. Approval of this course of action is recommended.

[M. & R. DIV. (s) EDGAR JADWIN
May 10, 1929
Off. Sec. War]

EDGAR JADWIN,
Major General,
Chief of Engineers.

1 Inclo. viz;
Map showing proposed
plan of diversion.

Recommendation of 7th indorsement approved May 11, 1929.

[M & R Div. (s) JAMES W. GOOD,
May 11, 1929 *Secretary of War.*
Off. Sec. War[

Sub. 2/6 accpg.

MAY 11, 1929.

COPY

Address Reply to
THE DISTRICT ENGINEER
Room 419, New Federal Building
Providence, R. I.

WAR DEPARTMENT
UNITED STATES ENGINEER OFFICE
Providence, R. I.

MAY 17, 1929.

Refer to File No. Conn. 54/1-166

Metropolitan District Water Supply Commission, 24 School Street, Boston, Mass.

GENTLEMEN: — With reference to your application of November 30, 1927 for a permit to divert water from the Swift River, Massachusetts, in accordance with the terms of Chapter 321 of the Acts of 1923 of that State, I have been directed by the Chief of Engineers under date of May 13 to inform you as follows:

(a) It is the duty of the War Department to institute proceedings to preserve the substantial navigability of navigable waters of the United States when the appropriation or regulation of the waters of a non-navigable tributary affects, substantially alters or modifies the condition or capacity of the channel of a navigable water.

(b) The War Department is unwilling to admit that the appropriation of water from the Swift River to the extent proposed in this application might not, on occasion, have an appreciable effect on the navigable capacity of the Connecticut River.

(c) Limited amounts of water may be appropriated from the Connecticut River basin above the Connecticut–Massachusetts State Line, without substantially diminishing the navigability of that stream within the limits of present navigability.

(d) It is found that a discharge of 4900 cubic feet per second at Sunderland, Massachusetts, corresponds to average lower low tide gauge height of 2.1 at Hartford, Connecticut and that a discharge of 4650 cubic feet per second at Sunderland corresponds to an average lower low tide gauge height of 2.0 at Hartford.

(e) From the studies of past records it appears there will be no substantial alteration or modification of the condition or navigable capacity of the channel of the navigable portion of the Connecticut River if the flow of water from the Swift River as provided in the terms of Chapter 321, of the Acts of 1927 (Massachusetts) be augmented during the critical period from June 1 to November 30, both inclusive, so that the measured rate of discharge on the Swift River shall be 70 cubic feet per second on such days as the United States Geological Survey gauge at Sunderland, Massachusetts indicates the discharge of the Connecticut River at that point to be less than 4900 cubic feet per second and more than 4650 cubic feet per second and shall be further augmented so that the measured rate of discharge past the impounding dam on the Swift River shall be 110 cubic feet per second on such days as the Geological Survey gauge at Sunderland, Massachusetts indicates the discharge on the Connecticut River at that point to be 4650 cubic feet per second or less.

(f) The rates of discharge set forth in subparagraph (e) are subject to review based on more complete data which may become available in the future.

Very respectfully,

(Signed) F. S. SKINNER
Major, Corps of Engineers,
District Engineer.

FILE COPY

FILED
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CHARLES ELMORE CR
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In the
Supreme Court of the United States.

OCTOBER TERM, 1929.

ORIGINAL NO. ~~13~~. 12

IN EQUITY.

THE STATE OF CONNECTICUT

v.

THE COMMONWEALTH OF MASSACHUSETTS.

REPRINT OF ANSWER OF DEFENDANT

THE COMMONWEALTH OF MASSACHUSETTS, INCLUDING AMENDMENTS ALLOWED DECEMBER 2, 1929.

JOSEPH E. WARNER, *Attorney General*
Of the Commonwealth of Massachusetts,

BENTLEY W. WARREN,
Special Assistant Attorney General
Of the Commonwealth of Massachusetts,

GERALD J. CALLAHAN,
R. AMMI CUTTER,
Assistant Attorneys General
Of the Commonwealth of Massachusetts,
Attorneys for the Defendant.

In the
Supreme Court of the United States.

OCTOBER TERM, 1929.

ORIGINAL NO. 13.

IN EQUITY.

STATE OF CONNECTICUT

v.

THE COMMONWEALTH OF MASSACHUSETTS.

MOTION FOR LEAVE TO FILE REPRINT OF ANSWER.

And now comes the defendant in the above-entitled case and moves for leave to file a reprint of the answer heretofore filed by leave of court on March 5, 1928, revised so as to include the amendments allowed by leave of court on December 2, 1929. The said amendments have been consolidated with the material in the original answer and certain minor errata have been corrected.*

JOSEPH E. WARNER,
Attorney General
of the Commonwealth of Massachusetts.

BENTLEY W. WARREN,
Special Assistant Attorney General
of the Commonwealth of Massachusetts.

GERALD J. CALLAHAN,
R. AMMI CUTTER,
Assistant Attorneys General
of the Commonwealth of Massachusetts.

* These corrections involve merely the headings of the letters in Appendices "B" and "C", appearing, *infra*, pp. 81, 89, 92.

In the
Supreme Court of the United States.

OCTOBER TERM, 1929.*

No. 13. ORIGINAL. IN EQUITY.

THE STATE OF CONNECTICUT,
Complainant,

v.

THE COMMONWEALTH OF MASSACHUSETTS,
Defendant.

ANSWER TO THE BILL OF COMPLAINT.†

And now comes the Commonwealth of Massachusetts by Joseph E. Warner, its Attorney General,‡ and for answer to the bill of complaint heretofore filed by leave of court by the State of Connecticut says as follows:

1. The defendant admits the material allegations of fact, if any such there be, contained in the first paragraph of the bill of complaint, set forth on page one of the printed bill.

2. Answering the second paragraph, set forth on page two of the printed bill of complaint, the defendant admits that the State of Connecticut was one of the "Thirteen Original Colonies" and that said State was a party to the original adoption of the Constitution of the United States; that said State, through its duly constituted authorities, has exercised sovereign power under said Constitution over such lands, waters, and other prop-

* October term 1927, No. 14.

† Original answer filed by leave of court on March 5, 1928.

‡ Succeeding Arthur K. Reading, resigned June 6, 1928.

erties as are now comprised within the territorial limits of the State of Connecticut since the adoption of such Constitution, but the defendant says that such sovereign power of the State of Connecticut is subject to the superior power of the Government of the United States in so far as regulatory power is given to the Government of the United States under the Constitution of the United States. As to whether or not said State has succeeded to all the rights, properties, duties, and obligations created by charter granted in 1662 by King Charles the Second, King of Great Britain, the defendant is ignorant and says that if the allegations to that effect are material allegations of fact it can neither affirm nor deny the same, but leaves the complainant to prove the same if and in so far as they may be material. The defendant denies that a great portion of the Connecticut River is included within the territorial limits of the State of Connecticut and that all of the portion of said river actually so included is navigable.

3. Answering the third paragraph set forth on pages two and three, of the printed bill of complaint, the defendant admits that it was one of the original Colonies and was a party to the Constitution of the United States; that at the time of the adoption of said Constitution the said defendant was a body politic organized for the usual governmental purposes and exercising sovereignty over the territory within its then defined limits, which included a portion of the Connecticut River and a portion of many of the tributaries of said river, including those specifically set out in said third paragraph of the bill of complaint. The defendant denies that the Swift River, the Ware River, and the Quaboag River flow directly into the Connecticut River, but avers that the Swift River flows into the Ware River about seven-tenths (7/10) of a mile above the village of Three Rivers in the town of Palmer, at which village the Quaboag

flows into the joint waters of the Ware and Swift rivers, forming as a result of said confluence a river known as the Chicopee River, which flows in a general westerly direction about seventeen miles emptying then directly into the Connecticut River. The defendant denies that the waters of all or any of said tributaries are necessary to maintain and preserve the flow of said Connecticut River.

4. Answering the fourth paragraph, set forth on page three, of the printed bill of complaint, the defendant denies each and every material allegation of fact therein contained, if any such there be, except that the defendant admits that the Commonwealth of Massachusetts has exclusive control and power of regulation of all water within its territorial limits and that such sovereignty over the waters within the territorial limits of the said State of Connecticut and of the Commonwealth of Massachusetts as may be exercised by the respective State and Commonwealth is subject to such rights as have been conferred upon the United States of America by the Constitution of the United States in the interests of interstate commerce and for the protection of the navigability of streams, wherever the same may be situated. The defendant further says that if the law of the State of Connecticut with respect to the control and power of regulation of the waters within the territorial limits of said State is here material, the defendant is ignorant of the same and leaves the complainant to prove the same in so far as it may be material. And further answering the defendant says that by the law both of the Commonwealth of Massachusetts and of the State of Connecticut owners of riparian lands are entitled to make reasonable and equitable use of the waters of streams flowing by or through their lands providing that such use is not inconsistent with a similar reasonable and equitable use of the said stream by lower riparian owners.

5. Answering the fifth paragraph, set forth on pages three and four, of the printed bill of complaint, the defendant admits that the United States of America, acting under the authority of the Constitution of the United States, by virtue of various acts of the Congress of the United States, has assumed the care and control of navigable rivers and has placed the greater portion of the duty of exercising such control in the War Department of the United States Government and the office of the Secretary of War; but the defendant denies that any acts and things which have been in fact done or which are in fact planned by the Commonwealth of Massachusetts, complained of in said bill of complaint, constitute in any way an interference with interstate commerce by affecting the navigability of the said Connecticut River, or that, in so far as concerns any rights or interests of the State of Connecticut or of the people thereof, there is any necessity that permission should be obtained from the War Department and the office of the Secretary of War of the United States before any of the acts and things heretofore actually done or hereafter actually contemplated to be done by the Commonwealth of Massachusetts, referred to in said bill of complaint, may be lawfully done by the Commonwealth of Massachusetts, [* but the defendant says

(*a*) that no such permit from Congress, the War Department, the Secretary of War, or the Chief of Engineers is necessary for the erection of any structures as such in a non-navigable river or stream.

(*b*) that the United States Government, the War Department thereof, the Secretary of War, and the Chief of Engineers have jurisdiction over the diversion of waters from non-navigable tributaries of navigable streams solely because such a diversion may result in the

* Text in brackets inserted by amendment, allowed December 2, 1929.

obstruction of the navigable capacity of a navigable stream into which such non-navigable stream may flow.

(*c*) that it is the duty of the Secretary of War and the Chief of Engineers to grant a permit for a diversion from a non-navigable stream, unless such diversion will result in an unreasonable obstruction of a navigable stream or will unreasonably alter or modify the capacity of the channel of a navigable water of the United States. The defendant admits that at the time of the filing of the bill of complaint in the proceedings before this Honorable Court the defendant had not obtained permission from the War Department or from the office of the Secretary of War of the United States to do any acts actually done or contemplated to be done by the Commonwealth of Massachusetts, referred to in the bill of complaint, for which any permit may be by law required.

The defendant avers, however, —

(*a*) That on November 30, 1927, the Metropolitan District Water Supply Commission made a formal application for a permit to divert water from the Swift river and the Ware river in accordance with the terms of the two acts hereunto annexed and marked "Appendix A." No permit was requested for permission to erect any structures in the Swift river or in the Ware river, inasmuch as the said rivers are non-navigable streams and the jurisdiction of the War Department does not extend to regulation of the waters of such streams unless there is such a diversion or use of the waters of such streams as will unreasonably alter or modify the condition or capacity of the channel of a navigable water of the United States into which such non-navigable streams eventually flow.

(*b*) That after extensive consideration and after public hearings by representatives of the War Department, it was found on March 14, 1928, upon recommendation of the Chief of Engineers and with the approval of the

Secretary of War, that the proposed diversion of the waters of the Ware river in excess of 85,000,000 gallons per day (131 cubic feet per second) would have no adverse effect on the navigable capacity of the Connecticut river, and the War Department informed the applicant that no objection would be interposed by the department to the diversion of all flood waters in excess of 85,000,000 gallons per day for the period between October fifteenth and June fifteenth of each year. The application of the Metropolitan District Water Supply Commission of Massachusetts, together with the sixth endorsement thereupon by the Chief of Engineers and the Secretary of War and a copy of a communication submitted to and received by the Metropolitan District Water Supply Commission from the United States Engineer's office at Providence, Rhode Island, are hereunto annexed, marked "Appendix B," the said appendix being hereby referred to and made a part hereof.

(*c*) That after extensive consideration and after public hearings it was found by the War Department, upon recommendation of the Chief of Engineers and with the approval of the Secretary of War, on May 11, 1929, that a certain proportion of the diversion of the waters of the Swift river might properly take place without causing any unreasonable, appreciable, or substantial alteration or modification of the condition of, or of the navigable capacity of, the channel of the navigable portion of the Connecticut river, and the Metropolitan District Water Supply Commission was informed that the War Department would interpose no objection to such a diversion within certain limits. A copy of the application for permission to divert certain waters of the Swift river filed by the Metropolitan District Water Supply Commission, together with the seventh endorsement of the War Department thereon, and a copy of the communication received by the Metropolitan District Water Supply

Commission from the office of the District Engineer with respect to said diversion are hereunto annexed and marked "Appendix C," to which reference is herein made and which is made a part hereof.] The defendant denies that any diversion of the waters of any other river in the watershed of the Connecticut River is contemplated or planned by it. The defendant denies each and every other material allegation of fact in said fifth paragraph of the bill of complaint, if any such there be.

6. Answering the sixth paragraph, set forth on page four, of the printed bill of complaint, the defendant admits, in so far as it is material, that the Connecticut River rises in the Connecticut Lakes of northern New Hampshire and flows southward between New Hampshire and Vermont and across Massachusetts and Connecticut into Long Island Sound; that it is the largest river in New England and that it is about 345 miles long; that it drains an area of approximately 11,345 square miles, of which approximately 2720 are within the Commonwealth of Massachusetts and approximately 1430 in the State of Connecticut; and that it falls about 1900 feet from its headwaters in the Connecticut Lakes to Long Island Sound. The defendant avers that although available statistics indicate that the mean annual precipitation in the Connecticut River Valley is about 40 inches ranging from about 45 inches at Hartford to about 35 inches in the upper portions, the inadequacy of records in the higher portions of the watershed which are generally snow-covered for a considerable period of the year, makes it probable that the rainfall in the upper portions of the area is greater than the statistics indicate. The defendant, if it be material, is ignorant as to whether the United States Government has found that the Connecticut River is a navigable stream from Springfield, Massachusetts, to Long Island Sound and leaves the petitioner to prove the fact if material, but the defendant admits that the por-

tion of said river below Hartford is to some extent in use as a means of transportation for passengers and freight. The defendant is ignorant as to whether a line of steamships carrying passengers between Hartford and New York makes two trips daily on said river, or as to whether the citizens of Connecticut and the industries throughout the Connecticut Valley and elsewhere receive coal, merchandise, and other freight by means of the Connecticut River, or as to whether there is a large number of sloops, yachts, and pleasure craft maintained and used upon said river; and the defendant leaves the complainant to prove all or any of these facts in so far as the same may be material. Each and every other material allegation of fact, if any such there be, contained in the sixth paragraph of the bill of complaint is denied by the defendant.

7. Answering paragraph 7 set forth on pages four and five of the printed bill of complaint, the defendant denies each and every material allegation of fact contained in said paragraph, except that it admits that the Ware River rises in the town of Westminster in Worcester County, flows southwesterly ten miles to New Boston, where it turns and flows northwesterly to Barre Falls, from which place it flows in a general southwesterly course to a point where it receives the Swift River, approximately seven-tenths of a mile northerly of the village of Three Rivers in the town of Palmer, and that the joint rivers then flow about seven-tenths of a mile to the said village of Three Rivers, where the joint rivers receive the Quaboag, which confluence forms the Chicopee River which flows in a direction approximately south of west to the city of Chicopee, where the Chicopee River enters the Connecticut River. The defendant admits further that the total distance from the source of the Ware River to the mouth of the Chicopee River is approximately sixty miles. The defendant avers that the

total drainage area of the Ware River, from its source to its confluence with the Swift River, is about two hundred and nineteen square miles, that the total drainage area of the Ware River above the point at which the diversion of certain flood waters is authorized by certain legislation of the Great and General Court of the Commonwealth of Massachusetts hereinafter mentioned and attached hereunto marked exhibit A, is only 98 square miles, and that even from this area only the diversion of certain flood waters as defined in the said legislation is authorized.

8. Answering the eighth paragraph, set forth on page five of the printed bill of complaint, the defendant admits the material allegations of fact contained in said paragraph.

9. Answering the ninth paragraph, set forth on page five of the printed bill of complaint, the defendant admits the material allegations of fact contained in said paragraph.

10. Answering the tenth paragraph, set forth on page five of the printed bill of complaint, the defendant denies that all the country drained by the Ware, Quaboag, Swift and Chicopee rivers is hilly, but admits that a large portion of such country drained by the said tributaries of the Connecticut River is hilly. The defendant admits that the average slope of the said various tributaries is about fifteen feet to the mile. The defendant admits that many lakes and ponds drain into the Connecticut River through small tributaries and that the minimum flow of said river is well sustained by natural drainage and filtrations. Each and every other material allegation of fact, if any such there be, contained in the tenth paragraph of the bill of complaint is denied by the defendant; and further answering, the defendant says that by the Constitution of the United States jurisdiction to determine questions affecting navigability of navigable waters is committed to Congress and to such officials as Congress may designate, and that Congress has so designated the

officials of the War Department and has delegated the administration of its powers of supervision of navigable streams to said officials and that the determination of Congress or said officials of the War Department is conclusive as to whether or not the navigability of a navigable stream is affected adversely by any act complained of by the bill of complaint.

11. Answering the eleventh paragraph, set forth on page six of the printed bill of complaint, the defendant says that it is ignorant as to whether the State of Connecticut is the owner of the bed of the Connecticut River within the territorial limits of the State of Connecticut and leaves the complainant to prove the same in so far as it be material; [* and further answering the defendant avers that in view of the determination of the Secretary of War, upon recommendation of the Chief of Engineers, that within the limits stated in the annexed findings of the department the proposed diversion of certain of the flood waters of the Ware river and of certain waters of the Swift river contemplated by the said defendant, the Commonwealth of Massachusetts, will have no adverse or injurious effect upon the navigability of the Connecticut river, and in view of the findings of the Chief of Engineers, approved by the Secretary of War, set forth in Appendices "B" and "C", attached hereunto and made a part hereof, no question of whether or not any act done or contemplated to be done by the Commonwealth of Massachusetts has or will have an adverse or injurious effect upon the navigability of the Connecticut river is here relevant or material, in the absence of proof that the Commonwealth of Massachusetts has diverted or actually proposes to divert more water than it is permitted to divert by the terms of the orders of the War Department, inasmuch as the determination of such issues and the protection of the capacity of navigable streams in the interest of interstate and

* Text in brackets inserted by amendment, allowed December 2, 1929.

foreign commerce has been committed by the Constitution of the United States to the Congress, which has delegated the greater part of its administrative powers in that behalf to the War Department, to the Secretary of War, and to the Chief of Engineers. The defendant, however, avers that neither the diversions authorized by the Massachusetts legislation, annexed hereunto and made a part hereof and marked "Appendix A", nor the said diversions as modified in accordance with the terms of the permission contained in the War Department's orders, annexed hereunto and made a part hereof and marked "Appendix B" and "Appendix C", will in any way unreasonably alter or modify the navigable capacity of the navigable portion of the Connecticut river; nor will the said diversions either as authorized by the Massachusetts legislation or as modified by the War Department's orders aforesaid cause any damage whatsoever to the health, welfare, safety, or property of the State of Connecticut or the citizens thereof]. Each and every other material allegation of fact, if any such there be, contained in the eleventh paragraph of the bill of complaint is denied by the defendant.

12. Answering the twelfth paragraph set forth on page six of the printed bill of complaint the defendant is ignorant as to whether the State of Connecticut is the owner of a certain tract of land situated on the banks of the Connecticut River in the city of Middletown within said State, and is further ignorant as to whether there is a state hospital for the insane located upon said tract, and leaves the complainant to prove the same in so far as it be material. Each and every other material allegation of fact contained in said twelfth paragraph of the bill of complaint is hereby denied by the defendant.

13. Answering the thirteenth paragraph, set forth on pages six and seven of the printed bill of complaint, the defendant admits the duties of the State of Connecticut as *parens patriae*, but denies each and every other mate-

rial allegation of fact contained in said paragraph; and further answering, says that no property or person situated or living in or having interest in the Connecticut Valley, so-called, is in any way injuriously affected by any acts and things done, contemplated to be done, or threatened to be done, by the Commonwealth of Massachusetts.

14. Answering the fourteenth paragraph, set forth on page seven of the printed bill, the defendant admits that the Connecticut River flows through a portion of the State of Connecticut, said portion of said State being commonly designated as a part of the Connecticut Valley, from Longmeadow near and south of Springfield, Massachusetts, to Saybrook, Connecticut, where it empties into Long Island Sound, which is an arm of the Atlantic Ocean. But the defendant denies that there is a vast area of watershed on either side of said river which has received any benefit from the flood waters of said river, but on the contrary the defendant says that said flood waters are in nowise of benefit to said watershed but cause great and immeasurable damage to the lands, which are at times covered by said waters. The defendant further denies each and every other material allegation of fact contained in said fourteenth paragraph of the bill of complaint. And further answering, the defendant says that no act or thing done or contemplated to be done by the Commonwealth of Massachusetts will in any way materially affect the flow of the Connecticut River or have any tendency to affect adversely the fertility of any land within the territorial boundaries of the State of Connecticut, but on the contrary the defendant alleges that all acts done or contemplated to be done by the Commonwealth of Massachusetts will benefit the State of Connecticut in that they will afford a means by which the damages from excessive and unusual floods may be in part controlled and reduced by withholding the said flood waters from an area which

otherwise would be covered with water and damaged. And the defendant further alleges affirmatively that according to certain plans for the storage, by the Commonwealth of Massachusetts of water in the valley of the Swift River, it will be possible, and it is the intention of Massachusetts to release a sufficient amount of water daily to maintain a reasonable flow in the Swift River and thus contribute to the maintenance of the flow of the Connecticut River itself. And further answering, the defendant says that under the legislation adopted by the Commonwealth of Massachusetts, so much of the waters of the Swift River as may be held back with the permission of the War Department of the United States will be stored by the Commonwealth of Massachusetts in the valley of the Swift River and will be in nowise diverted into any other place until such time as the said waters are actually required for use for drinking and other household purposes by the citizens and inhabitants of the Commonwealth of Massachusetts, at which time the waters will be transferred, as actually needed for such use, to reservoirs directly supplying the region in and about the city of Boston; that only the flood waters of the Ware River, as defined in said legislation, copies of which are hereunto annexed marked Appendix A, will be diverted by the Commonwealth of Massachusetts under the provisions of said legislation, so that no interference with, or diminution of, the flow of said last-named river during the drier seasons of the year will take place, such flood waters actually taken being in part stored in the Wachusett Reservoir and in part in a reservoir to be constructed in the valley of the Swift River, to which reservoirs such flood waters of the Ware River actually diverted will be transferred by means of tunnels and conduits, and that such flood waters will be so diverted only for a supply of water for drinking, household, and other domestic and municipal uses of the 1,900,000

human beings living in the city of Boston and its environs.

15. Answering the fifteenth paragraph, set forth on pages seven and eight, of the printed bill of complaint, the defendant says that it is ignorant of the truth or accuracy of the material allegations of fact therein set forth and therefore leaves the complainant to prove the same in so far as they may be material, but the defendant denies the truth or the soundness of the conclusions reached in said paragraph as to the benefit to riparian lands resulting from the flooding thereof and the depositing of sediment thereon, as alleged in said paragraph.

16. Answering the sixteenth paragraph, set forth on page eight, of the printed bill of complaint, the defendant admits that the State of Connecticut is in part thickly populated, but avers that said State is also in part a rural community and sparsely settled; and the defendant further admits that the inhabitants of said State have large agricultural and industrial enterprises and interests in that area known as the Connecticut Valley; that the Connecticut Valley is drained by the Connecticut River; that beyond the borders of the State of Connecticut and for many miles within the territorial limits of the Commonwealth of Massachusetts there is a large watershed which is drained by the said Connecticut River; and that to some extent, both within Massachusetts and Connecticut, cities, towns, factories, and riparian owners discharge sewage, offal, and waste matter, but no offal in Massachusetts, in such manner that it is emptied into and carried away and disposed of by the waters of the Connecticut River, but to what extent such drainage takes place the defendant is ignorant and leaves the complainant to prove the same in so far as it be material. And the defendant denies that such acts and things pertaining to drainage have been done necessarily by reason of the natural topography of the country, or that it is

necessary because of such drainage that the natural flow of the Connecticut River or the flood waters thereof should remain undiminished and unimpeded, or that it is necessary, in the present state of development of scientific or hygienic disposition of such sewage, that such sewage, offal, and waste material should continue to be emptied into the waters of said river, either in Connecticut or at any other point. And further, the defendant denies that considering the present uses of the Connecticut River and of the valley adjacent thereto, either by inhabitants of the Commonwealth of Massachusetts or municipalities therein or by inhabitants of the State of Connecticut, any interference with the flow of the Connecticut River or diminution in the volume of water discharged by it or carried by it, and still less such acts and the execution of such plans as are authorized by the legislation of Massachusetts to provide a domestic supply of water as hereinbefore and hereinafter set forth, will in any way adversely affect the health of the citizens of the State of Connecticut or cause to them any sickness, suffering or discomfort, or in any way cause or make possible disease and epidemics, or that there will be in any way damage caused to the State of Connecticut or to the citizens thereof. The defendant avers that the waters of the Connecticut River at the point where the river crosses the boundary between the State of Connecticut and the Commonwealth of Massachusetts could successfully dilute and carry away several times the volume of sewage now contained in the said waters at that point without in any degree or manner causing sickness, suffering, epidemic, or even discomfort to the State of Connecticut or to the people thereof, and further, the defendant avers that the diversions of some of the waters of the Swift River and of the flood waters of the Ware River planned and contemplated by the defendant and described in its said legislation will in nowise cause

an appreciable diminution in the flow of the Connecticut River at the state boundary, or indeed a diminution which it would be possible to determine by usual methods of stream flow measurement at that point. And further, the defendant affirms that there is an adequate remedy at law for acts or injuries, if any such there may be, incidentally caused to the State of Connecticut or to the citizens thereof; but the defendant denies that there will be any wrongful acts or injuries to the State of Connecticut or to citizens thereof done or caused to be done by the Commonwealth of Massachusetts or by its inhabitants, as in the bill of complaint alleged and set forth. And further answering, the defendant says that all acts referred to in the bill of complaint done or contemplated to be done by the Commonwealth of Massachusetts will, as herein set forth both above and hereafter, benefit the State of Connecticut and the citizens thereof, and that said acts and things done or contemplated to be done are in law and in fact in all respects a reasonable and proper use by the Commonwealth of Massachusetts of the waters of the Swift and Ware rivers in no way inconsistent with any rights, interests, privileges, or immunities of the State of Connecticut or of the citizens thereof.

17. Answering the seventeenth paragraph, set forth on pages nine and ten, of the printed bill of complaint, the defendant admits that it, the Commonwealth of Massachusetts, has already expended certain sums of money in making plans, preparing specifications, advertising for bids from contractors, and doing certain further acts and things incident to carrying out certain plans to store and to divert, for a domestic water supply for the inhabitants of Boston and its environs, certain waters of the Swift River and of the Ware River, in accordance with the provisions of Massachusetts Acts of 1926, chapter 375, and Acts of 1927, chapter 321, which are

annexed to this answer, marked "Appendix A", and made a part hereof, and further answering the defendant avers that said rivers are wholly within the territorial limits of the Commonwealth of Massachusetts. Each and every other material allegation of fact contained in said seventeenth paragraph of the bill of complaint the defendant denies.

And further answering, the defendant says that within the city of Boston in said Commonwealth and within the area immediately about said city there is a rapidly growing population, now containing approximately 1,900,000 persons; that for a long period of time it has been apparent that the present supply of water for drinking and domestic purposes is inadequate and if not supplemented by further supplies of pure water for drinking and domestic purposes the persons residing in the Metropolitan district about the city of Boston and within said city will be unable to continue a normal growth in that region and will be subjected to discomfort, inconvenience, and grave risk and danger from sickness and epidemic; that the taking of certain of the waters of the Ware River and of the Swift River has for more than thirty years been definitely contemplated by the Commonwealth of Massachusetts for the purpose of supplying the Metropolitan area about Boston with water for drinking and other domestic uses; that a study of the water requirements of the city of Boston has gone on for over a century, and that experts in water and sanitary engineering have made frequent and well-considered reports of the situation and problem in this respect; that the overwhelming majority opinion of qualified persons who have studied the situation has determined that no other satisfactory and adequate source of a supply of water exists for said city of Boston and the Metropolitan area about said city unless it includes the waters of the Ware and the Swift rivers, and that no other supply can possibly meet the

reasonable demands and needs of the said area and of its rapidly increasing population; that the population whose needs require the proposed diversions from the Ware and Swift rivers is not only that of the metropolitan area within ten miles of the State House, but also that of several other centers whose future requirements must be met directly from metropolitan sources or from sources close to the metropolitan area which would otherwise be available to the metropolitan district itself, that the total population supplied by the district or whose water supply needs are thus intimately connected with those of the district, is over two and one-half million and rapidly growing, comprising nearly 1,900,000 in the metropolitan area itself, 300,000 in the Merrimac Valley group which have long been demanding water from the Wachusett Reservoir, 275,000 in metropolitan Worcester whose needs are met by areas allotted from the Wachusett drainage area, and 100,000 in Essex County, whose need of the Ipswich River prevents its use by the metropolitan district; that in accordance with the reports of competent authorities the Great and General Court of Massachusetts, by its enactment of Acts of 1926, chapter 375, and Acts of 1927, chapter 321, above referred to and annexed to this answer, has provided for taking the flood waters of the Ware River, as described in said acts, and certain of the waters of the Swift River, as a source of supply of water for domestic purposes for the city of Boston and other communities in and adjoining the Metropolitan area. The defendant avers that the Commonwealth of Massachusetts, in accordance with the provisions of the said acts of the Great and General Court of the Commonwealth, proposes to divert the flood waters of the Ware River, as defined in said acts, and to store them either in the Wachusett reservoir near the city of Worcester in said Commonwealth or in the reservoir to be constructed in the Swift River Valley in

accordance with the provisions of said acts, by the Commonwealth of Massachusetts; that the Ware River will be connected with both the Swift River Reservoir and the Wachusett Reservoir by a system of tunnels, conduits, and aqueducts so that water may be transferred into one reservoir or another as need may require; that the Wachusett Reservoir now directly supplies the city of Boston and the Metropolitan area about said city; that the said Commonwealth proposes to construct, by building certain dams in the valley of the Swift River, a reservoir, which will cover with water a large area in the valley of the Swift River; that in this reservoir it is proposed to store not only large quantities of water of the Swift River in excess of a certain minimum flow, as described in the legislation above referred to, but also certain flood waters of the Ware River, which will be transferred to the said Swift River Reservoir by the said system of tunnels and aqueducts above referred to; that the scope and nature of the works authorized by the said legislation is shown upon a blueprint map of the so-called New England states attached hereunto, to which reference is made hereby, upon which map is shown the small area drained by the Ware River and the Swift River above the points at which the flood waters of the Ware River and certain waters of the Swift River are respectively diverted, and also the large area comprised in the whole watershed of the Connecticut River and the defendant avers that it is clearly and graphically shown by the said map how small, minute, and reasonable with respect to the whole waterflow of the Connecticut River watershed are the watersheds from which a partial diversion is authorized; that in the judgment of the Great and General Court of said Commonwealth the emergency is so great and the prospect of a failure of a domestic water supply for the Metropolitan district is so imminent as to lead it to provide in said legislation, in order to

make possible the location and construction of said reservoir, for the elimination and termination of three historic towns of said Commonwealth, to wit, Enfield, Greenwich, and Prescott; that the Commonwealth has no plan or intention of diverting from the Connecticut River watershed the waters of any other river than the Swift River and the Ware River, and that the acts of the Great and General Court of Massachusetts, set forth in Appendix A hereof, specifically prohibit the diversion or use of any of the waters of the Miller's River; that the proposed diversion of certain of the waters of the Swift River and of the flood waters of the Ware River will in nowise materially affect the flow of the Connecticut River, and that it will be impossible to determine by any practicable measurements at the point where the Connecticut River passes the boundary between the State of Connecticut and the Commonwealth of Massachusetts any diminution in the flow of said river caused by the proposed diversion and storage of the waters of the Ware River and of the Swift River; that in nowise will the State of Connecticut or the inhabitants thereof be injured or damaged, or will their health or safety be imperilled, or will any discomfort be caused to the inhabitants of the State of Connecticut by reason of the said diversion. And the defendant further avers that by the storage of water contemplated the Commonwealth of Massachusetts will reduce somewhat the intensity and severity of certain seasonal floods which take place in the Connecticut Valley and watershed to the great damage of the inhabitants thereof, both within the State of Connecticut and within the Commonwealth of Massachusetts; that all the waters so taken or planned to be taken in order to supply the inhabitants of the city of Boston and of the Metropolitan area about said city with a necessary, adequate, and satisfactory supply of water for drinking and domestic purposes fall within the territorial limits of

the Commonwealth of Massachusetts and are subject to be taken by the said Commonwealth and by the laws thereof and according to the laws in force throughout the United States of America, subject only to the right of the Federal Government to control and regulate navigable waters; that the said taking of waters will in nowise contravene any Federal law or right, nor, if it be here material, which the defendant denies, will said taking in any way impair or impede the navigability of any portion of the Connecticut River; that such uses for drinking and domestic purposes of the waters so to be stored and diverted both in law and in fact constitute a reasonable and proper user of the waters of the Swift and of the Ware rivers, and they are in nowise inconsistent with any rights, interests, privileges, or immunities of the State of Connecticut or of the inhabitants thereof. And further answering the defendant says that by the laws of the State of Connecticut the diversion of water from the watershed of the Connecticut and other rivers is permitted and authorized for the purpose of providing municipal supplies of water for domestic use; and the defendant avers that the law both of the Commonwealth of Massachusetts and of the State of Connecticut permits the reasonable use of water by riparian owners if such use does not unreasonably injure lower riparian owners; that the laws of both said State and Commonwealth permit the diversion of waters, even of interstate streams, for the purpose of providing a water supply for the domestic use of the inhabitants of the community, and permit the diversion of said waters to a watershed beyond the watershed of said stream.

18. Answering the eighteenth paragraph, set forth on page 10, of the printed bill of complaint, the defendant denies that it, the Commonwealth of Massachusetts, has made extensive surveys, perfected elaborate plans, and proceeded to carry such plans into execution with-

out notice to the State of Connecticut or without any attempt to ascertain whether damage would result, from such diversion of water as is contemplated, to the State of Connecticut or to property owned by the State of Connecticut, or to citizens of the State of Connecticut, or to the interest and welfare of the State of Connecticut; but on the contrary the defendant avers and alleges that the State of Connecticut was fully and completely aware of the plans of the Commonwealth of Massachusetts; that the State of Connecticut was officially represented at hearings before legislative committees of the Great and General Court of the Commonwealth of Massachusetts when the acts authorizing the carrying out of the plans complained of were being considered; that the plans now adopted by the Commonwealth of Massachusetts are the result of a comprehensive study of the water supply problem of the metropolitan district of Boston and that the said study of the problem has been going on for more than a century without in any manner being kept secret; that the recommendations and reports of engineers, water and health experts and other technical students of the situation have been printed and circulated as public documents and have with practical unanimity favored the use of the waters of the Swift River and the Ware River for the purpose of said water supply, and that such waters constitute the only suitable and adequate supply available for the reasonable needs of the metropolitan district of Boston for water for domestic purposes, and that said reports of experts studying the problem have been made public and have been available to officials of the State of Connecticut.

And further answering, the defendant denies that the taking of certain waters from the Swift River and the flood waters of the Ware River, contemplated by the Commonwealth of Massachusetts, is part of such a gen-

eral plan as is set forth in the eighteenth paragraph of said bill of complaint or of any plan other than that specifically set out in said legislation a copy of which is hereunto annexed as Appendix A. Each and every other material allegation of fact, if any such there be, contained in said eighteenth paragraph of the bill of complaint is denied by the defendant.

And further answering, the defendant says that any user of said waters done or contemplated to be done constitutes a reasonable user of said waters by the Commonwealth of Massachusetts in no way inconsistent with any right or interest of the State of Connecticut or of the inhabitants thereof.

19. Answering the nineteenth paragraph, set forth on pages 10 and 11, of the printed bill of complaint, the defendant denies that it, the Commonwealth of Massachusetts, has various other plans in addition to the diversion of any waters now contemplated to be taken as authorized by the said legislation or has under construction conduits, reservoirs, and tunnels for the diversion and storage of waters from tributaries of the Connecticut river other than its plans for diversion of certain waters of the Swift River and some of the waters of the Ware River, or that any diversion of waters of rivers other than the Swift and the Ware rivers has been authorized by the Commonwealth of Massachusetts. Each and every other material allegation of fact, if any such there be, contained in the said nineteenth paragraph, is hereby denied, but the defendant avers that said Connecticut River could successfully dilute and carry away several times the volume of sewage contained in said river at the point where it crosses the boundary between the State of Connecticut and the Commonwealth of Massachusetts without in any degree causing a menace or danger to the health of the inhabitants of the State of Connecticut or causing to said inhabitants any discomfort.

20. Answering the twentieth paragraph, set forth on page 11, of the printed bill of complaint, the defendant, the Commonwealth of Massachusetts, admits that it has already let certain contracts and done certain preliminary work on the construction necessary for the diversion of the flood waters of the Ware River and of such waters of the Swift River as the said Commonwealth proposes to store and divert. The defendant further admits that unless enjoined from so doing it intends to proceed with the work authorized by the Great and General Court of Massachusetts in Acts of 1926, chapter 375, and Acts of 1927, chapter 321; that it is proposing to proceed with such work because of the pressing emergency confronting the Commonwealth with respect to providing a suitable, necessary, and adequate supply of water for drinking and domestic purposes for the city of Boston and for the metropolitan district about said city; that unless a supply is furnished within a very short period the inhabitants of the said area in and about the city of Boston will be subjected to grave and serious dangers of epidemic and disease, and that the inhabitants of the said area will have insufficient water to meet their necessary and reasonable requirements for drinking purposes; that the construction of the work proposed for the diversion described herein and authorized by the said acts will take a considerable number of years, and that the first works for the diversion of the flood waters of the Ware River cannot, according to the best information at the disposal of the defendant, in any event be completed before 1931, and that until that time no diversion of water from the Connecticut River watershed will be effected by the said works; that by the said diversion, as has been alleged and averred above, only the flood waters of the Ware River, as described in said act, and certain of the waters of the Swift River will be diverted, in no way causing any appreciable diminution

in the flow of the Connecticut River at the point where the said Connecticut River enters the State of Connecticut. Each and every other material allegation of fact, if any such there be, contained in said twentieth paragraph of the bill of complaint is denied by the defendant.

21. Answering the twenty-first paragraph, set forth on page 11 of the printed bill of complaint, the defendant, the Commonwealth of Massachusetts, denies each and every material allegation of fact contained in said paragraph. And further answering, the defendant says that any diversion of the flood waters of the Ware River and of such waters of the Swift River as the said Commonwealth plans to divert is within the sovereign and riparian rights of said Commonwealth and authorized by the laws of said Commonwealth and by the laws of the United States of America, and that in nowise is the State of Connecticut, as *parens patriae* or in its own right, or are the citizens of the State of Connecticut, deprived of any of their rights or property, either contrary to law or without due process of law. And the defendant further alleges that by virtue of the provisions of the acts of the Great and General Court of the Commonwealth of Massachusetts, hereinbefore referred to, authorizing the said diversions, due and adequate provision is made for the payment of compensation, not only to citizens of the Commonwealth of Massachusetts but also to citizens of the State of Connecticut, who may suffer any damage by reason of the said diversion, whether such damage be suffered within the Commonwealth of Massachusetts or within the State of Connecticut; and the defendant further alleges that by the common law of the Commonwealth of Massachusetts, as set forth in the leading case of *Manville Co.* v. *City of Worcester*, reported in the 138th Massachusetts Reports, at page 89, a remedy is given not only to citizens of the Commonwealth of Massachusetts but to citizens of the

State of Connecticut for damages suffered within their borders by virtue of any diversion authorized by the said Commonwealth. And the defendant says that the said remedies in the courts of the Commonwealth of Massachusetts at common law and by virtue of the acts of the Great and General Court, above referred to, constitute a full, sufficient, and adequate remedy at law which may be prosecuted by the State of Connecticut or any inhabitants thereof.

22. Answering the twenty-second paragraph, set forth on page 12 of the printed bill of complaint, the defendant admits that heretofore within the territorial limits of said Commonwealth of Massachusetts certain cities and towns, acting with the consent of said Commonwealth, have constructed certain sewerage systems which in part empty and discharge into the Connecticut River, or tributaries thereof, and further, the defendant admits that certain waste material is discharged by a number of mills and industrial plants within the Commonwealth of Massachusetts into the Connecticut River or into tributaries thereof; but the defendant denies that any such permitted discharge of sewage or other matters by any agency, corporation, or person within the Commonwealth of Massachusetts cannot be carried away and removed unless the present normal flow of the river is maintained, or that the periodic discharge of flood waters is necessary to carry away such sewage and other substance or to cleanse and purify the Connecticut River and the banks and property adjacent thereto. And further answering, the defendant avers that the waters of the Connecticut River at the point where said river passes the boundary between the State of Connecticut and the Commonwealth of Massachusetts could successfully dilute and carry away several times the volume of sewage and other substances now contained in the said waters without in any way causing damage, injury, or discomfort to the inhabit-

ants of the State of Connecticut. Each and every other material allegation of fact, if any such there be, contained in said twenty-second paragraph of the bill of complaint is hereby denied by the defendant. And further answering, the defendant says that no diversion of water of any tributary of the Connecticut River authorized by said legislation of the Commonwealth of Massachusetts will in any way prevent the proper removal of sewage drained in said river or the purification of said river by the natural processes of the flow of said river.

23. Answering the twenty-third paragraph, set forth on page 12 of the printed bill of complaint, the defendant says that it is ignorant as to what interests the complainant represents and leaves the complainant to prove the same in so far as it is material. Each and every other material allegation of fact, if any such there be, contained in said twenty-third paragraph of the bill of complaint is denied by the defendant.

24. Answering the twenty-fourth paragraph, set out on page 13 of the printed bill of complaint, the defendant denies each and every material allegation of fact contained in said paragraph, particularly denying that the State of Connecticut has either by the law of the State of Connecticut or under the laws of the Commonwealth of Massachusetts, either as a sovereign, as *parens patriae*, or as a riparian owner, any vested right to the waters of the Connecticut River or to any portion thereof above and beyond a reasonable flow within said river. And the defendant further avers that the Commonwealth of Massachusetts by its law and consistently with the laws of the State of Connecticut is entitled as a sovereign and as *parens patriae* to make reasonable use of the waters of tributaries of the Connecticut River or of the Connecticut River itself within the borders of said Commonwealth, so long as it does not in any material and extraordinary way interfere with a reasonable flow within said

river. And the defendant says that it in no way interferes with the flow of said river or of its tributaries or contemplates any such interference or diversion of waters of the Connecticut River or of its tributaries as will in any way injure the State of Connecticut or its inhabitants or will in any way interfere with any rights which the State of Connecticut has under the Constitution of the United States or by virtue of its sovereign rights or by virtue of the laws of nations or of the laws of the State of Connecticut or of the Commonwealth of Massachusetts.

25. Answering the twenty-fifth paragraph, set forth on page 13 of the printed bill of complaint, the defendant denies that the complainant, the State of Connecticut, or its citizens and residents are in any way damaged by any acts done, alleged to be done, or contemplated to be done by the Commonwealth of Massachusetts or by its citizens and residents. And the defendant further denies that the State of Connecticut in any capacity is entitled to any relief in this Honorable Court or that it has set forth any state of facts entitling it to relief in equity by this Honorable Court. Each and every other material allegation of fact, if any such there be, contained in said twenty-fifth paragraph of the bill of complaint or in the prayers of the complainant for relief, numbered 1 through 5 and appearing on pages 13, 14, and 15 of said bill of complaint, is hereby denied by the defendant.

And further answering, the defendant says

First. That a grave and serious emergency exists, as has been above set forth, within said Commonwealth of Massachusetts in that unless a suitable supply of drinking water and of water for domestic purposes is obtained by the City of Boston and the metropolitan area about said city, the inhabitants of the said area must of necessity be unable to continue their normal growth and life with reasonable safety and comfort within said area,

and will be subjected to great risks and menace from disease and epidemic, because of the lack of a suitable supply of pure and unpolluted drinking water which can be obtained from no source within the Commonwealth except from the watershed of the Connecticut River as has been authorized in said legislation with respect to certain waters of the Swift River and the flood waters of the Ware River. That the said Commonwealth has expended large sums in preparation for diverting and storing certain reasonable amounts of the waters of the said Swift and Ware rivers, which diversion will in no way seriously, appreciably, or unreasonably diminish the normal flow of the said Connecticut River or cause damage to the citizens of Connecticut or to the State of Connecticut; that the State of Connecticut has well known for a long time that such reasonable diversion of the waters of the Swift and of the Ware rivers has been contemplated by the Commonwealth of Massachusetts and has failed to make seasonable representations of any damage to said State or to its inhabitants, permitting the Commonwealth of Massachusetts to proceed with its studies, investigations, and plans and to expend large sums for the furtherance of said plans, relying upon the fact that the State of Connecticut, having due notice of the said plans, made no substantial opposition to the legislation pending before the Great and General Court of the Commonwealth of Massachusetts in the form in which the said legislation was finally enacted.

Second. That both the State of Connecticut and its inhabitants have an adequate remedy at law for any damage caused to it or to them by reason of the proposed diversion of certain of the waters of the Swift River and of the flood waters of the Ware River; that the inhabitants of the State of Connecticut, both by virtue of the common law of the Commonwealth of

Massachusetts and by virtue of the acts authorizing the said diversions, may sue in the courts of the said Commonwealth for compensation for any damage which they may suffer within said State of Connecticut, and that the State of Connecticut itself may recover such damages as it may suffer by reason of the said diversion, either to its sovereign right or to any riparian rights which it may possess, by an action of law before this Honorable Court.

Third. That by reason of the great emergency existing in the Commonwealth of Massachusetts as above set forth, because of the great and immeasurable suffering which would be caused to the citizens of the Commonwealth of Massachusetts if the said diversion be not permitted, and in consideration of the fact that the State of Connecticut and the inhabitants thereof will suffer no material damage by reason of the said diversion, if indeed they suffer any damage, a court of equity should not grant to the complainant in the premises any specific or injunctive relief, since the complainant in its proprietary capacity as a riparian owner has an adequate remedy at law and in its capacity of *parens patriae* needs no such relief on behalf of or because of the situation of all or any of its inhabitants, all of whom are given by the legislation of the Commonwealth of Massachusetts and by the common law prevailing therein a full, adequate, and complete remedy at law for any damage or injury suffered by them.

Fourth. That under the well established law laid down by this Honorable Court in accordance with the provisions of the Constitution of the United States, the State of Connecticut may not in this court recover any damages in behalf of its individual citizens against the Commonwealth of Massachusetts, nor may it receive any equitable or specific relief other than that to which it is entitled by virtue of its duties as *parens patriae.*

Fifth. That the allegations contained in the bill of complaint in many and divers places, with respect to any interference which may be caused by the said diversion with the navigability of the Connecticut River are in nowise material, relevant, and pertinent to this bill, [* inasmuch as the duty of protecting the navigability of navigable waters of the United States and the regulation of obstructions and diminutions of the navigable capacity of such waters has been committed, consistently with the provisions of the Constitution of the United States, by the Congress of the United States in large part to the Secretary of War, the Chief of Engineers, and the War Department, and in view of the determinations and findings of the Chief of Engineers, with the approval of the Secretary of War, as hereinbefore set forth and as more fully set out in said findings in Appendices "B" and "C", hereunto annexed and made a part hereof, within the limits provided in said findings, the issue of the effect of the proposed diversions upon the navigability of the Connecticut river is not open in these proceedings, in the absence of proof that the Commonwealth of Massachusetts has diverted or actually proposes to divert more water than it is permitted to divert by the terms of the orders of the War Department. The defendant, however, avers that neither the diversions authorized by the Massachusetts legislation, annexed hereunto and made a part hereof and marked "Appendix A", nor the said diversions as modified in accordance with the terms of the permission contained in the War Department's orders, annexed hereunto and made a part hereof and marked "Appendix B" and "Appendix C", will in any way unreasonably alter or modify the navigable capacity of the navigable portion of the Connecticut river; nor will the said diversions either as authorized by the Massachusetts legisla-

* Text in brackets inserted by amendment, allowed December 2, 1929.

tion or as modified by the War Department's orders aforesaid cause any damage whatsoever to the health, welfare, safety, or property of the State of Connecticut or the citizens thereof.]

Sixth. That the complainant has not set forth facts in the bill of complaint sufficient to show any material injury either to the State of Connecticut or to interests of the inhabitants of the State of Connecticut which the complainant is bound to protect as *parens patriae*, and that therefore, by virtue of the long established rule of this Honorable Court that it will not grant specific, equitable, or injunctive relief against a sovereign state of the United States of America, except for grave cause shown and because of serious encroachments upon the sovereign rights of a sister state or upon rights which said sister state is bound to protect as *parens patriae*, exhibited and proved by credible proof supporting specific allegations, the said State of Connecticut is in this case entitled to no specific, equitable, or injunctive relief.

Seventh. That the State of Connecticut has well known for a long time of the plans of the Commonwealth of Massachusetts with respect to the said diversions hereinbefore described, and, after the said plans had progressed materially, brought this bill in equity to enjoin the action of the said Commonwealth, causing great expense and delay to the said Commonwealth.

Wherefore, the defendant prays that it may be compensated for the said expense and delay caused by the complainant, and that it may be allowed its costs of defending this bill of complaint, thus improvidently and unnecessarily brought by the said State of Connecticut.

Eighth. That by virtue of sovereign rights and by virtue of riparian rights according to the laws both of the State of Connecticut and of the Commonwealth of Massachusetts, the Commonwealth of Massachusetts and individual citizens thereof and persons owning land

therein are entitled to make reasonable use of the waters of the Connecticut River and of tributaries thereof, not only for purposes of providing adequate supplies of water for drinking and household purposes, but also to make reasonable use of the said waters for drainage and sewage purposes, and the defendant says that it, the said Commonwealth of Massachusetts and the individual citizens thereof now make and will make after the plans now in contemplation by the said Commonwealth are carried into effect, only a reasonable and proper use of the waters of the Connecticut River and its tributaries for any and all the purposes to which the said waters are now put or are planned to be put by the said Commonwealth and its inhabitants, in nowise interfering with any vested or riparian rights of the State of Connecticut or of any inhabitants thereof.

Wherefore, the defendant prays that the bill of complaint exhibited against it, the said Commonwealth of Massachusetts, by the State of Connecticut may be dismissed, and that said defendant may be allowed its costs and may be compensated in damages for the delay and expense caused to it by the State of Connecticut and its officers and agents.

THE COMMONWEALTH OF MASSACHUSETTS,

By

JOSEPH E. WARNER,
Attorney General
Of the Commonwealth of Massachusetts.

BENTLEY W. WARREN,
Special Assistant Attorney General.

GERALD J. CALLAHAN,
R. AMMI CUTTER,
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APPENDIX A.

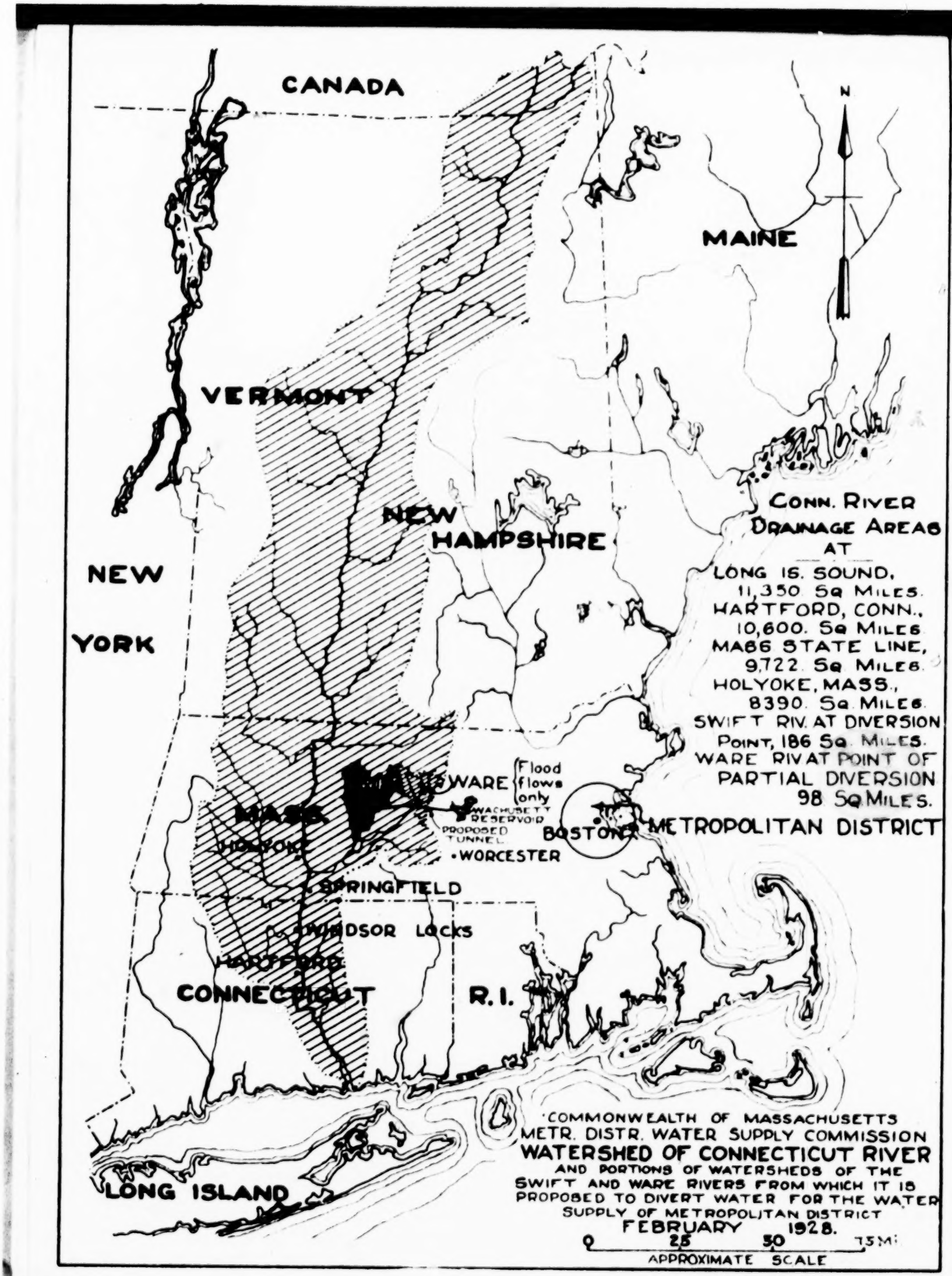
Acts of 1926, Chapter 375.

An Act making Additional Provision for the Water Supply Needs of the Metropolitan Water District and Other Communities which Now or Hereafter may require Water therefrom, and of the City of Worcester.

Whereas, The deferred operation of this act would, in part, defeat its purpose, therefore it is hereby declared to be an emergency law necessary for the immediate preservation of the public convenience;

Be it enacted, etc., as follows:

Section 1. A special metropolitan district water supply commission is hereby established, consisting of the commissioner of the metropolitan district commission as chairman and of two associate commissioners to be appointed by the governor with the advice and consent of the council, said commission to be hereinafter referred to as the commission. The associate commissioners shall serve for terms of five years, or until their successors are appointed and qualified. The governor may with like advice and consent remove any associate commissioner and fill for any unexpired term vacancies which may occur in the associate commissionerships. The chairman shall receive in addition to his salary as commissioner of the metropolitan district commission the sum of twenty-five hundred dollars a year, and the associate commissioners shall each receive a salary of four thousand dollars a year. The commission may hire such offices and other quarters as may be needed for the conduct of its work. The commission may appoint a chief engineer, and with the advice



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and consent of the governor and council may fix his salary.

The commission, on behalf of the commonwealth, shall forthwith for the purpose of extending and increasing the water supply of the metropolitan water system, and of such cities and towns not members of the metropolitan water district as may hereafter require water from said system, divert into the Wachusett reservoir of said district the flood waters, as defined in section four, of the Ware river at a point in the town of Oakham or the town of Barre not more than one mile from the bridge of the Boston and Albany railroad crossing said river in the village of Coldbrook, and construct as a part of the metropolitan water system, such works as may be necessary for such extension and increase, and all structures and appurtenances incidental or complementary thereto; provided, that said flood waters shall not be so diverted between May thirty-first and December first in any year unless such diversion be first approved by the state department of public health. Said works, and particularly the aqueduct or tunnel required for said diversion, shall be constructed at such grade and of such capacity and otherwise so that they can be used as a part of works that shall later be constructed for diverting into the Wachusett reservoir the waters of the Swift river, in substantial accordance with the plans and recommendations of the joint board on water supply needs and resources of the commonwealth as contained in its report to the general court in the year nineteen hundred and twenty-two, printed as house document number fifteen hundred and fifty of said year. All plans, maps and records of said joint board relating to the proposed extension to the Ware, Swift and Millers rivers shall be made available to the commission, and the department of public health shall, at the expense of the commission, furnish it, on request, with any information relative to

said projects that said department may have in its possession. In constructing the works herein authorized, the commission may adopt such emergency methods as in its opinion may be necessary or desirable to secure their completion as soon as the public necessity may require.

Said aqueduct or tunnel upon completion to said point of diversion and the diverting dam and other works and property incidental thereto, when completed shall be turned over to the metropolitan district commission, and shall be thereafter maintained by said commission as a part of the metropolitan water system under chapter ninety-two of the General Laws with all the powers and duties conferred by said chapter.

The commission established hereby shall annually, on or before January fifteenth, make a report, in conformity with the provisions of section thirty-two of chapter thirty of the General Laws, for the fiscal year ending on the thirtieth of November preceding, and said report shall be printed as a public document under section six of chapter five of the General Laws.

SECTION 2. In contracts entered into by the commission for the construction of the works herein authorized, there may be inserted a provision that the commission or any contractor or sub-contractor for the commission may employ laborers, workmen and mechanics for more than eight hours in any one day and for more than forty-eight hours in any one week in such construction, when, in the opinion of the commissioner of labor and industries, public necessity so requires. The commission may appoint and in its discretion remove such engineering, legal, clerical and other assistants as it may deem necessary to carry on the work herein authorized, and may fix their compensation in accordance with such rules and regulations as the commission may establish and as shall be approved by the governor and council. Such appoint-

ments shall not be subject to classification under sections forty-five to fifty, inclusive, of chapter thirty of the General Laws, and chapter thirty-one of the General Laws shall not apply to removals, and, in accordance with such regulations as the commission may establish and as shall be approved by the governor and council, any appointment, including that of the chief engineer, may be wholly exempt from said chapter thirty-one. Upon request of the commission, the division of civil service shall hold special examinations.

SECTION 3. For the purpose of providing for the future extension of the metropolitan water system, the commission, on behalf of the commonwealth, may take by purchase or otherwise such lands, water rights, easements and other property in the watershed of the Swift river as it may deem necessary or desirable in preparation for the development of this river as a potential water supply for future use. The commission shall submit to the general court not later than the first Wednesday of January, nineteen hundred and twenty-seven, a draft of such legislation as it may deem necessary or advisable for the development of an adequate future water supply from the Swift river.

The commission shall also consider the recommendations of the metropolitan district commission relative to making available by filtration or chlorination, or both, the waters of the Sudbury and Cochituate watersheds as contained in house document number eleven hundred and ten of nineteen hundred and twenty-six and as referred to in the report of the metropolitan water supply investigating commission in house document number nine hundred of nineteen hundred and twenty-six; shall consider the effect on the present water supply of the metropolitan district of the addition thereto of water purified by filtration or other means and the effect of such water upon the present aqueducts, reser-

voirs and other facilities of the metropolitan water district; and shall report in detail plans and specifications for such land takings and for the construction of such additional works in the town of Framingham, and of such covered reservoirs as it may recommend, and the estimated expense thereof. The commission shall also consider and report on the amount of water which should be required for reasons of health and sanitation to flow below dam number one on the Sudbury river notwithstanding any provision of chapter one hundred and seventy-seven of the acts of eighteen hundred and seventy-two, and on all matters set forth in house document number ten hundred and forty-eight of nineteen hundred and twenty-six and the petition accompanying the same, especially the present and future water supply needs and resources of the town of Framingham, and the terms and conditions upon which said town should be entitled to receive water from the water supply now owned by the metropolitan district. The commission shall also consider and report upon the effect of the diversion for water supply purposes of the waters of the South Sudbury river upon public health in the town of Ashland, and whether or not a system of sewage disposal should be provided in said town in the event of such diversion. The commission shall report to the general court its findings and recommendations relative to the questions outlined in this paragraph, together with drafts of such legislation as may be necessary to effect its recommendations, by filing the same with the clerk of the house of representatives not later than December first of the current year, and it shall at the same time file a copy thereof with the budget commissioner.

SECTION 4. For the purposes of this act, the flood waters of the said Ware river which the commission is authorized to divert as provided in section one are hereby defined to be the waters thereof at and above

the point of diversion established under section one in excess of a flow of eighty-five million gallons a day, meaning thereby that on any day when the natural flow of said river is less than eighty-five million gallons no water shall be diverted.

The commission shall establish and maintain proper gauging stations or such suitable regulating devices as may be convenient and practical to establish the aforesaid limit of diversion with reasonable accuracy. Copies of all records obtained at such stations or by such devices shall be open to inspection during reasonable office hours and information shall be furnished, from time to time whenever reasonably requested, to any person owning or operating any mill or manufacturing establishment below the point of diversion or taking, or to the mayor of any city or the chairman of the board of selectmen of any town bordering on said river.

The waters of said Ware river and its tributaries at or above the point of diversion established as aforesaid, other than those authorized to be taken by the provisions of this act, and other than those waters not so taken which are needed for the processes of industry or for reasons of public health, are within its contemplation to be, when and as hereafter authorized by the general court, available for the domestic and public water supply of the city of Worcester and of the towns within the watershed of said river and its tributaries.

SECTION 5. For any of the purposes of this act, the commission, on behalf of the commonwealth, may at any time and from time to time take by eminent domain or acquire by purchase or otherwise the flood waters, as hereinbefore defined, of the Ware river and its tributaries, or any of said flood waters, at or above the point of diversion established under section one, and all water rights, water sources, lands, rights of way, easements and other interests in land, including any cemetery,

that may be deemed by the commission to be necessary or desirable for any of said purposes, or for the further protection of the purity of the waters to be diverted under this act.

Any taking under this act may be in fee or otherwise, perpetual in duration or for a limited period of time, according as the commission shall determine and set forth in the order of taking.

All takings under this act and all proceedings in relation to or growing out of the same shall conform to the provisions of chapter seventy-nine of the General Laws, except in the following particulars:

(*a*) The commission need make no award of damages sustained by persons or corporations in their property by any such taking.

(*b*) The notice required by section eight of said chapter may be given at any time within one year after the recording of the order of taking as provided in section three of said chapter.

(*c*) Petitions for the assessment of damages under section fourteen of said chapter may be filed within two years after the recording of the order of taking provided for in said section three, but petitions for the assessment of damages for the taking of rights of diversion may be filed within two years after, and not before, the actual diversion. The last six lines of section sixteen of said chapter seventy-nine, beginning with the word "but" in line three, shall have no application to takings under this act.

(*d*) For all property taken under this act, except rights of diversion, the right to damages shall vest upon the recording of the taking in the registry of deeds. For taking of rights of diversion the right to damages shall vest upon and not before the actual diversion of water.

The owner of any real estate, whether within or without the commonwealth, which is not taken but is injured

by the taking of the waters of Ware river under authority of this act or by the construction of the works incidental thereto shall be entitled to damages therefor and may recover the same from the commonwealth as in the case of a taking in accordance with the provisions of this act.

SECTION 6. In carrying out the powers and duties conferred upon it by this act, the commission may construct and maintain buildings, machinery, roads, conduits and aqueducts; may lay and maintain pipes, drains and wires; may alter or change the grades or directions of any water course; may carry and conduct any aqueduct, conduit, pipe, drain or wire under or over any water course, or any railroad, street or other way, in such a manner as not unnecessarily to obstruct or impede travel thereon; may dig up any such road, street or way, and lay, maintain and repair aqueducts, conduits, pipes, wires and other works beneath the surface thereof, conforming to any reasonable regulations made by the mayor and aldermen of cities and the selectmen of towns, respectively, wherein such works are performed, and restoring, so far as practicable, any such road, street or way, to as good order and condition as the same was in when such digging was commenced; the commission may enter upon and use the lands of others; may take down dams to such an extent as it may deem necessary for prosecuting its works, and shall rebuild such dams whenever the necessity for keeping them down ceases; shall use such lands and do all work relating to such dams, in a reasonable manner with regard to the interests of the owners thereof, and, so far as practicable, shall heed all reasonable requests made by such owners; and in general may do any other act or thing necessary or proper for carrying out the powers and duties conferred upon it by this act.

The commission may raise or alter or discontinue parts of any railroad or public way, and, in case of a

railroad, shall make such raisings or alterations of the railroad or construct upon existing or other locations parts of the railroad to take the place of the parts so discontinued, as and in such manner as shall be mutually agreed upon by the commission and the board of directors of the railroad company, and, if they cannot agree thereon, then as and in such manner as shall be determined on the application of either party in writing by the department of public utilities, which is hereby authorized and directed to adjudicate finally upon the same; and, if the commission shall be of the opinion that the making of any such change of grade, alteration or construction requires that lands or rights therein be taken therefor, the commission shall, on behalf of the commonwealth, take such lands or rights therein and convey the same to the railroad company, to be thereafter held and used as the board of directors of such company may determine, and the railroad company may, if it desires, locate its lines over any lands or rights therein so conveyed to it, and, when said new lines of railroad are completed, the railroad company may discontinue the operation of the portions of its existing lines for which the new lines are substituted, and may maintain and operate said new lines of railroad; and the commission shall make the raisings or alterations of public ways as aforesaid and build in place of the parts of public ways discontinued as aforesaid such other reasonable and suitable ways, which shall thereafter be highways, as and in such manner as shall be mutually agreed upon by the commission and the county commissioners of the county in which the work is done, or, if they cannot agree thereon, then as and in such manner as shall be determined on the application of the commission in writing by the division of highways of the department of public works, which division is hereby authorized and directed to adjudicate finally upon the same.

The commission, in flooding or otherwise affecting any burial ground, shall conform to any reasonable requirements relating thereto of the board of health of the city or town in which the same is located.

The commission may make such surveys, borings and do such other preliminary work on private lands as the commission may determine to be necessary or desirable, doing as little damage as possible and paying for the same.

SECTION 7. The commission may sell at public or private sale, or exchange or lease any property, real or personal, or any easement or water right, whether taken by eminent domain or otherwise acquired, which in the opinion of the commission is no longer needed for the purposes of this act. Any sums of money so received shall be applied to reduce construction costs or to reduce the bonded indebtedness for the works. The commission may, by lease, license or contract, permit the construction and maintenance on or over any land or waters under its control of towers, poles, wires and other structures for the purpose of transmitting electric power. The commission may construct, maintain and operate such power plants and other structures as may in its opinion be necessary to utilize the fall of water created at any of the dams, channels, tunnels or other structures under its control, for the production of power or electricity; may locate, construct and maintain lines for transmitting the same; and may sell or contract for the sale or use of any power or electricity so created, and any sums of money so received shall be applied to reduce the charges of maintenance of said works.

SECTION 8. For the purpose of carrying out the provisions of this act, the commission may expend such amounts, not exceeding in the aggregate fifteen million dollars, including the sum required to be paid by the city of Worcester under section twelve, as may, from

time to time, be approved by the governor and council. To meet such expenditures, the state treasurer shall, from time to time, on the request of the commission and subject to such approval, issue bonds of the commonwealth to an amount not exceeding the sum of fourteen million dollars, which shall be designated on their face, Metropolitan Additional Water Loan, Act of 1926. Such bonds shall be issued as coupon or registered bonds, for such term of years as may be recommended by the governor, in accordance with section three of Article LXII of the amendments to the constitution, and shall bear interest at such rate as shall be fixed by the state treasurer, with the approval of the governor and council. The amounts necessary to meet interest and serial payment requirements on said bonds and the expenses of maintaining and operating the works to be constructed by the commission under this act, and such other expenses as may be authorized hereunder, shall be added to the annual assessments upon the cities and towns comprising the metropolitan water district and apportioned and collected as provided by section twenty-six of chapter ninety-two of the General Laws.

Section 9. The supreme judicial court or any justice thereof and the superior court or any justice thereof, during a sitting of the court or in vacation, on the petition of the commission or of any city, town, corporation or person interested, or of the attorney of any such petitioner, shall have jurisdiction in equity or otherwise to enforce the provisions of this act and of any rule, regulation or order made under the authority of the same and to prevent any violation of said provisions, rules, regulations or orders; provided, however, that no suit in which the right of the commission to make any taking authorized by this act is questioned shall be brought except in the supreme judicial court for the county in which said taking has been made or is to be made, nor

unless the said suit is brought within six months after the passage of this act.

SECTION 10. No person shall after the effective date of this act erect a dam for mill purposes across the Ware river or any of its tributaries above the point of diversion authorized by this act without the consent in writing of the commission, or, after said works have been turned over to the metropolitan district commission, of said metropolitan district commission. In granting its consent, either commission may impose such conditions as it may deem to be for the public interest. Any person owning a practicable mill site on said river or any of its tributaries who applies for such consent and is refused, or is granted consent subject to conditions, and who is damaged in his property by such refusal or by the imposition of such conditions, may recover from the commonwealth the damage so caused in the manner provided in section five.

SECTION 11. The towns of Hubbardston, Barre, Oakham, Hardwick, New Braintree, Palmer and Ware, or any of them, may take from the Ware river above the point of diversion established under section one so much of the water thereof as they, or any of them, have already been, or may hereafter be, authorized by the legislature to take for supplying their inhabitants with water, and in case any of said towns shall hereafter on its application therefor be authorized to take such water it shall pay to the commonwealth, on behalf of the metropolitan district, a fair proportion of the cost incurred by the commonwealth for the acquisition under the provisions of this act of the waters of said river, or rights therein, and for the construction, maintenance and operation of such works and structures as are by this act provided for, including a fair proportion of the cost of maintaining the purity of said water, the said proportion to be determined by an engineer designated by the metropolitan

district commission and by an engineer appointed by such applicant town, and, if they cannot agree, such proportion shall be determined by a master to be appointed by the supreme judicial court on the petition of the commonwealth or said applicant town, and the report of the master when affirmed by said court shall be final and conclusive on all parties.

SECTION 12. The city of Worcester is hereby authorized, for the purpose of meeting the requirements of said city for increasing its water supply and such requirements of adjacent and nearby towns now supplied or hereafter required to be supplied by said city, from time to time, to acquire by purchase or otherwise, or take by eminent domain in accordance with the procedure set forth in section five, and subject to the provisions thereof, and to hold and convey, directly or indirectly, into and through said city the waters of South Wachusett brook, so-called, and the waters of Quinapoxet river, so-called, in the town of Holden, at or near an elevation of seven hundred and eight feet above mean sea level at Boston, at or above the outlet of Quinapoxet pond, including the waters in any ponds or reservoirs thereon and the waters flowing directly or indirectly, into and from the same, and all springs and tributaries thereto, and the water rights connected with the aforesaid waters and sources above the places of taking; and the said city may take existing reservoirs and ponds upon said streams and their tributaries above the points at which it is authorized as aforesaid to take the said waters, but the total supply herein authorized to be taken shall not exceed in any calendar year an average quantity of ten million gallons of water per diem, and the balance of the waters remaining, and also from time to time such part of the quantity of water herein authorized to be acquired and diverted as is not, in the opinion of the water commissioner of said city, needed for the supply of the water

system of said city, shall be permitted to flow to the Wachusett reservoir of the metropolitan water system; provided, that if in the opinion of the metropolitan district commission, the needs of the metropolitan water system, pending the completion of the works necessary to divert the flood waters of the Ware river as authorized in section one, require that said amount herein authorized to be taken by the said city be reduced, the metropolitan district commission may, at any time and from time to time, reduce said amount to not less than an average quantity of five million gallons of water per diem. In case of such reduction the commonwealth on behalf of the metropolitan district shall pay the city of Worcester for the amount of water so withheld by such reduction at the rate of forty dollars per million gallons. The said city shall take such measures to protect and preserve the purity of the said waters and shall maintain such sanitary conditions relative thereto and in their respective watersheds as the state department of public health may require. Said city may by aqueduct or pipe line conduct the waters so taken, into the city directly or through any reservoir and any aqueduct or pipe line belonging to said city and now existing. The said city may, for the purposes aforesaid, construct, lay and maintain conduits, pipes, canals, water courses, dams, reservoirs and other works under or over lands, water courses, railroads, railways, public or private ways and along such ways, and may take by purchase or otherwise and hold in fee or otherwise any lands, dams or structures, easements or rights in land that may be deemed necessary for said purposes and for collecting, purifying, storing, discharging, conducting or distributing said waters or preserving the purity thereof. The water taken by said city under this section shall be measured in a manner approved by the metropolitan district commission which shall have at all reasonable times free

access to any apparatus or device used for measuring the same and to the records thereof.

In addition to such payments and damages as said city may be required to make for any purchases or takings hereinbefore authorized, it shall pay into the state treasury on or before the first day of July, nineteen hundred and twenty-seven, the sum of one million dollars, and thereupon the metropolitan district commission, acting for the commonwealth, shall release and convey to said city all right and title to said waters, subject to the provisions of this act. The amount so paid into the state treasury shall be used toward defraying construction costs incurred by the commission under this act.

In consideration of the provisions of this section, it is within the contemplation of this act that no further claim be made by the city of Worcester to any further part of the watershed tributary to the Wachusett reservoir for water supply purposes.

SECTION 13. For the purpose of meeting expenditures required under the preceding section, the city of Worcester may borrow from time to time, within a period of eight years from the effective date of this act, such sums as may be necessary, not exceeding, in the aggregate, two million five hundred thousand dollars, and may issue bonds or notes therefor, which shall bear on their face the words, City of Worcester Water Loan, Act of 1926. Each authorized issue shall constitute a separate loan, and such loans shall be payable in not more than thirty years from their dates. Indebtedness incurred under this act shall be in excess of the statutory limit, but shall, except as herein provided, be subject to chapter forty-four of the General Laws.

SECTION 14. The said city shall, at the time of authorizing said loan or loans, provide for the payment thereof in accordance with section thirteen; and when a vote to

that effect has been passed, a sum which, with the income derived from water rates, will be sufficient to pay the annual expense of operating its water works and the interest as it accrues on the bonds or notes issued as aforesaid by the city and to make such payments on the principal as may be required under the provisions of said section thirteen shall, without further vote, be assessed by the assessors of the city annually thereafter in the same manner as other taxes, until the debt incurred by said loan or loans is extinguished.

Approved May 28, 1926.

Acts of 1927, Chapter 321.

An Act making Additional Provision for the Water Supply Needs of the Metropolitan Water District and for Communities which Now or Hereafter may require Water therefrom, by the Development of an Adequate Future Water Supply from the Swift River.

Whereas, The deferred operation of this act would in part defeat its purpose, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Section 1. The metropolitan district water supply commission, established by chapter three hundred and seventy-five of the acts of nineteen hundred and twenty-six, hereinafter referred to as the commission, on behalf of the commonwealth, shall forthwith, for the purpose of adding to, extending and further developing the additional sources of water supply of the metropolitan water system provided for in said chapter three hundred and seventy-five, divert into the Wachusett reservoir of

the metropolitan water system the waters of the Swift river, and of Beaver brook, a tributary of the Ware river, by the construction of an extension, to the Swift river, of the aqueduct or tunnel between the Wachusett reservoir and the Ware river at or near Coldbrook provided for in said chapter three hundred and seventy-five, and by the construction of a temporary diversion dam as may be required at a point on the Swift river below the confluence of the east and middle branches or at a point on the east branch near the village of Greenwich, and ultimately by the construction of a dam across the Swift river at or near the boundary line between the towns of Ware and Enfield, and of a dam across Beaver brook at or near said boundary line, thereby creating a storage reservoir in the Swift river valley. No water shall be diverted or stored in any calendar day when the flow of the Swift river at or just above the village of Bondsville in the towns of Palmer and Belchertown is less than twenty million gallons; and there shall be discharged from any storage created by the commission above said village a sufficient amount of water to maintain, so far as such storage will allow, a flow of said river at said village of not less than twenty million gallons in each calendar day.

The commission may also divert into the aqueduct or tunnel between the Wachusett reservoir and the Ware river, provided for in said chapter three hundred and seventy-five, the waters of the Quinapoxet river at a point in the town of Holden about one mile westerly from the boundary line between the towns of Holden and West Boylston. The flow of the Quinapoxet river at said point of diversion shall not be diminished by said diversion to less than one million gallons in each calendar day.

The commission shall establish and maintain proper gauging stations, or such regulating devices as may be

convenient and practical, to limit the diversion of the waters of the Swift and Quinapoxet rivers as aforesaid and to establish and maintain the aforesaid flow of the Swift river at or just above Bondsville with reasonable accuracy. Copies of all records for the Swift river obtained at such stations or by such devices shall be open to inspection during reasonable office hours, and information shall be furnished from time to time, whenever reasonably requested, to any person owning or operating any mill or manufacturing establishment below the dam across the Swift river authorized by this act, or to the mayor of any city or the chairman of the board of selectmen of any town bordering on the Swift or Chicopee rivers.

All or any part of the flood waters of the Ware river, as defined in section four of chapter three hundred and seventy-five of the acts of nineteen hundred and twenty-six, authorized to be diverted at or near Coldbrook by said chapter three hundred and seventy-five, or of the waters of the Quinapoxet river herein authorized to be diverted, may be diverted, at such times as may be necessary or desirable for storage, into the Swift river reservoir pending the ultimate diversion thereof into the Wachusett reservoir.

SECTION 2. The commission may construct as a part of the metropolitan water system such aqueducts, tunnels, dams, reservoirs and other works as in its opinion may be necessary for the additions, extensions and developments authorized by this act and all structures and appurtenances that in the opinion of the commission are desirable as incidental or complementary to such additions, extensions and developments. The commission shall also collect and publish in its reports such information as to the geology of the region in which any of the works which it is authorized to construct may be located as may be of value in connection with the geological

history of the state. The works authorized by this act shall be of such dimensions, capacities and areas as the commission may determine, and may from time to time be enlarged or modified as the commission may determine; and may be so constructed, enlarged or modified as to allow for a future increase in capacity to take care of the diversion of other streams in substantial accordance with the plans and recommendations of the joint board on water supply needs and resources of the commonwealth as contained in its report to the general court in nineteen hundred and twenty-two printed as house document fifteen hundred and fifty of that year; but nothing in this act shall be held to authorize any taking or diversion of any waters of the Millers river water shed or to affirm the intention of taking at any future date any unutilized flood waters of said Millers river.

Except as otherwise in this act provided, all the property acquired and works constructed under this act shall when completed be turned over to the metropolitan district commission, and shall thereafter be maintained and operated by it as a part of the metropolitan water system under chapter ninety-two of the General Laws with all the powers and duties conferred by said chapter.

SECTION 3. In constructing the works authorized by this act the metropolitan district water supply commission shall proceed with the organization and in the manner provided by said chapter three hundred and seventy-five. All of the provisions of section two of said chapter three hundred and seventy-five relative to the employment of laborers, workmen and mechanics and relative to the appointment, removal and fixing of compensation of all employees of the commission, including the appointment and removal of a chief engineer, shall apply in carrying out the provisions of this act. None of the employees of the commission, whether appointed before or after the effective date of this act, shall become

members of the state retirement system, but those who are members thereof at the time of their employment may be continued therein.

SECTION 4. For any of the purposes of this act, or for the further protection of the purity of the waters to be diverted under this act, or for the purpose of providing for a future increase in the capacity of the Swift river reservoir, the commission on behalf of the commonwealth may, at any time and from time to time, take by eminent domain or acquire by purchase or otherwise, such lands, waters, water rights, easements and other property or interests in property, including any cemetery, as it may deem necessary or desirable; provided, however, that the amount of water to be let down into the Swift river as provided in section one of this act shall not be diminished by any taking under this act.

The commission shall take or otherwise acquire in fee all lands which will be submerged by the construction of dams and reservoirs under this act.

For any of the purposes of this act, the commission may take and use the waters of any great pond within the water shed of the Swift river, and thereafter any other public use of such great pond and the waters thereof shall cease.

The commission may also take and use, for the purposes of this act or of said chapter three hundred and seventy-five, any land or rights in land of the commonwealth upon such terms and conditions as may be agreed upon by the commission and the state department or other authority which at the time is vested by the commonwealth with the care and control of such lands or rights, and if the commission and such department or other authority cannot agree upon said terms and conditions, then such terms and conditions shall be fixed by the governor and council.

Any taking under this act, except as hereinbefore in

this section provided, may be in fee or otherwise, perpetual in duration or for a limited period of time, according as the commission shall determine and set forth in the order of taking.

All takings under this act of property or rights in property and all proceedings in relation to or growing out of such takings shall conform to the provisions of chapter seventy-nine of the General Laws, except in the following particulars:

(*a*) The commission need make no award of damages sustained by persons or corporations in their property by any such taking.

(*b*) The notice required by section eight of said chapter seventy-nine may be given at any time within one year after the recording of the order of taking as provided in section three of said chapter.

(*c*) Petitions for the assessment of damages under section fourteen of said chapter seventy-nine may be filed within two years after the recording of the order of taking provided for in said section three, but petitions for the assessment of damages for the taking of rights of diversion appurtenant to land not taken may be filed within two years after, and not before, the actual diversion. The last six lines of section sixteen of said chapter seventy-nine, beginning with the word "but" in line three, shall have no application to takings under this act.

(*d*) For all property taken under this act except rights of diversion appurtenant to land not taken, the right to damages shall vest upon the recording of the taking in the registry of deeds. For all rights of diversion taken under this act appurtenant to land not taken, the right to damages shall vest upon and not before the actual diversion of water.

At any time after the passage of this act, the commission before or after the actual diversion of water may

make such settlements as it may deem for the best interests of the commonwealth with any person or corporation who may be or has been damaged by any taking of or injury to his water rights under this act and in making any such settlements the commission may, subject to the approval of the governor and council, make a contract, which shall be in a form approved by the attorney general and shall be binding upon the commonwealth and such owner or person and his successors in title, with respect to the amount of the flow down the stream to which such water rights are appurtenant, or to the time and manner of such flow, or may agree to furnish in some other way a substitute for the water rights which have been or may be taken or injured. Such contract, if acknowledged by the owner or commission or any member of it before a justice of the peace or a notary public, may be recorded in the registry of deeds in the county in which the land to which such water rights are appurtenant is situated.

SECTION 5. Any person or corporation owning at the time of the passage of this act any real estate which is not taken or purchased for the reservoir or the protection of the waters thereof under the provisions of this act situated within the territory comprised in the towns of Dana, Enfield, Greenwich and Prescott or within those portions of the towns of Belchertown, Hardwick, Pelham, Petersham, New Salem, Shutesbury and Ware not more than one mile distant from land required to be purchased or taken in fee under the second paragraph of section four of this act which real estate is decreased in value by the carrying out of the provisions of this act, or any person or corporation owning at the time of the passage of this act an established business on land within territory defined in this paragraph, which business is decreased in value, whether by loss of custom or otherwise, by the carrying out of the provisions of this act

shall be entitled to recover damages in the manner hereinafter provided in this section. The commission, however, in its discretion, if it finds that any such person or corporation has an established business located near to but outside the areas defined in this paragraph which has been actually decreased in value by the carrying out of the provisions of this act and which person or corporation would have been entitled to damages under this section if located within the areas defined in this paragraph, may make such settlement by agreement with such person or corporation as it may deem just, but only upon the filing of a claim therefor within the time hereinafter provided in this section.

Any resident of the towns of Dana, Enfield, Greenwich, Prescott or New Salem at the date of the passage of this act who had been for the six months next previous thereto regularly employed therein in a manufacturing establishment or in an established business or upon any lands and is not the owner or part owner of any interest in any such business or lands who, by the carrying out of the provisions of this act, is deprived of such employment and obliged to seek other employment or has suffered a diminution in wages shall, if upon reasonable effort he has been unable to secure such employment or to avoid such diminution in wages, be entitled to recover either by agreement with the commission or in the manner hereinafter provided in this section his damages in loss or diminution of wages, not exceeding, however, the amount of wages received by him for the six months previous to such loss of employment. No person shall have any right of recovery for more than one such loss of employment or one such diminution in wages under the provisions of this paragraph and no person shall have the right to recover for both injury to an established business under the provisions of the preceding paragraph and for loss of employment therein.

Any wage earner who at the time of the passage of this act resides in the town of Dana, Enfield, Greenwich, Prescott or New Salem who makes no other claim for damages under this act shall in case he is forced by the carrying out of this act to remove to a locality more than eight miles from land required to be taken in fee under the second paragraph of section four of this act be repaid the actual cost of such removal to an amount not exceeding fifty dollars.

Any person or corporation claiming to be injured as provided in this section, if such person or corporation so elects, may, after November first, nineteen hundred and twenty-eight but not later than six months from the date of the annexation of the towns of Enfield, Greenwich and Prescott, as provided in section thirteen of this act, file with the commission a sworn statement of his claim, setting forth the facts upon which it is based and the amount claimed, and if the commission cannot agree with such claimant upon the amount of such damage, or if the payment agreed to of such claim is not made within six months after such sworn statement is filed, then for determination of his damages, such claimant may within sixty days thereafter file a sworn copy of such statement of claim with the board of referees hereinafter provided. A justice of the supreme judicial court, either in term time or vacation, upon application by the commission or any other party in interest and after publication, or such other notice as the court may order, shall from time to time as the need may exist appoint one or more boards of referees, each consisting of three disinterested persons for the determination of damages, and may after notice and hearing of any parties interested, fill any vacancy on such boards. The compensation of such referees shall be fixed by the supreme judicial court in its order of appointment, and the same, together with such expenses as may

Salem and Prescott in a general westerly direction to the point of beginning.

(*b*) There shall be annexed to the town of Dana, and thereby to Worcester county, those portions of the towns of Prescott and Greenwich, being portions of Hampshire county, bounded as follows: beginning at the point where the middle branch of the Swift river crosses the boundary line between the towns of Dana and Prescott and following the existing channel of said middle branch in a general southerly direction to its confluence with the east branch of said river; thence following the existing channel of said east branch in a general northeasterly direction to the boundary line between the towns of Greenwich and Hardwick; thence following the boundary line between the towns of Greenwich and Hardwick in a general northeasterly direction to its intersection with the boundary line of the town of Dana; thence following the boundary line between the towns of Dana and Greenwich in a general northerly direction to its intersection with the boundary line of the town of Prescott; thence following the boundary line between the towns of Dana and Prescott in a general northerly direction to the point of beginning.

(*c*) There shall be annexed to the town of Hardwick, and thereby to Worcester county, that portion of the town of Greenwich, being a portion of Hampshire county, bounded as follows: beginning at the most westerly corner stone on the boundary line between the towns of Hardwick and Greenwich located about two thirds of a mile southerly from the outlet of East pond; thence running due west to the existing channel of the east branch of the Swift river; thence following the existing channel of said east branch in a general northeasterly direction to its intersection with the boundary line between the towns of Hardwick and Greenwich; thence following said boundary line between the towns of Hardwick and Greenwich in a general southerly direction to the point of beginning.

(*d*) There shall be annexed to the town of Ware those portions of the towns of Greenwich and Enfield, all of said towns being in Hampshire county, bounded as follows: beginning at the aforesaid most westerly corner stone on the boundary line between the towns of Hardwick and Greenwich located about two thirds of a mile southerly from the outlet of East pond; thence running due west to the existing channel of the east branch of the Swift river; thence following the existing channel of said east branch and of the Swift river in a general southwesterly direction to the intersection of the boundary line of the towns of Ware, Belchertown and Enfield; thence following the boundary line between the towns of Ware and Enfield in a general easterly direction to its intersection with the boundary line of the town of Hardwick; thence following the boundary line between the towns of Hardwick and Enfield in a general northerly direction to its intersection with the boundary line of the town of Greenwich; thence following the boundary line between the towns of Hardwick and Greenwich in a general northerly direction to the point of beginning.

(*e*) There shall be annexed to the town of Belchertown that portion of the town of Enfield, both of said towns being in Hampshire county, bounded as follows: beginning at the intersection of the boundary lines of the towns of Belchertown, Pelham and Enfield; thence running due east to the existing channel of the west branch of the Swift river; thence following the existing channel of said west branch and of the Swift river in a general southerly direction to the boundary line between the towns of Belchertown and Enfield; thence following the boundary line between the towns of Belchertown and Enfield in a general northwesterly direction to the point of beginning.

(*f*) There shall be annexed to the town of Pelham that portion of the town of Enfield, both of said towns being in Hampshire county, bounded as follows: beginning at the intersection of the boundary lines of the towns of Belcher-

town, Pelham and Enfield; thence running due east to the existing channel of the west branch of the Swift river; thence following the existing channel of said west branch in a general northerly direction to the intersection of the boundary lines of the towns of Prescott, Pelham and Enfield; thence following the boundary line between the towns of Pelham and Enfield in a westerly and southerly direction to the point of beginning.

SECTION 14. All the property belonging to the towns of Enfield, Greenwich and Prescott shall upon the annexation of said towns to adjacent towns by authority of this act, vest in and become the property of the commonwealth for the benefit of the metropolitan water district, and the commonwealth shall succeed to all the rights, claims and causes of action of each of said towns, and shall assume and be liable for all the debts, obligations, trusts, duties and liabilities of each of said towns. All actions and causes of actions by or against the said towns of Enfield, Greenwich and Prescott pending or accrued, when such annexation takes effect, shall survive, and may be prosecuted to final judgment and execution by or against the commonwealth. All books, papers, monies and other property in the possession of the treasurer of each of these three towns or of any town officer thereof shall be turned over to the commission at the time of said annexation, and the commission shall wind up and liquidate the affairs of each such town as speedily as possible. Upon the final liquidation of the affairs of the towns of Enfield, Greenwich and Prescott, the commission shall turn over such of the records of said towns respectively as are of permanent value to the towns of Belchertown, Dana and New Salem, respectively, and said records shall be preserved with the records of the town to which they have been so turned over.

Upon such annexation the division of accounts of the

department of corporations and taxation shall audit the books and accounts of the collector of taxes of each of the towns of Enfield, Greenwich and Prescott, respectively, and all taxes assessed for the year of such annexation and remaining uncollected, except taxes assessed upon property acquired by the commission under the second paragraph of section four of this act, to persons residing or property located within the territory annexed to another town shall be, by the assessors of the town in which such taxes were assessed, committed to the collector of taxes of the town to which such territory is by the provisions of this act annexed. It shall be the duty of any collector of taxes to whom any such taxes are committed to complete the collection of such taxes with legal interest and costs and pay over the same to the treasurer of the town for which he is the collector.

Upon the annexation to adjacent towns of the territory within the towns of Enfield, Greenwich and Prescott as set forth in this act, the commission or the metropolitan district commission shall yearly in the month of November reimburse each of said adjacent towns for all money paid out or expenses incurred under the laws of the commonwealth for the year preceding in the relief or aid of persons whose settlement was gained in whole or in part whether by original acquisition or derivation within the territory annexed to each of said towns respectively prior to the date of such annexation.

SECTION 15. Annexation under this act shall constitute the annexed territory part of the town and the county to which it is annexed with respect to the jurisdiction of the courts, as well as for all other purposes. All suits, proceedings, complaints and prosecutions, and all matters of probate, which shall be pending at the time of such annexation before any court or trial justice, or such matters as may be incident thereto, may however be

heard and determined and prosecuted to final judgment and execution before such court or justice as if said annexation had not taken place; but upon such annexation taking place, the several courts and trial justices having jurisdiction over the respective towns to which the territory within said towns of Enfield, Greenwich and Prescott is annexed shall have jurisdiction of all civil actions, matters of probate and insolvency and criminal prosecutions thereafter begun, although the cause of action has accrued, or crime, offense or misdemeanor has been committed, before such annexation, in the same manner and to the same extent as if such territory had been annexed prior to the accrual of the cause of action or the commission of the crime, offense or misdemeanor.

SECTION 16. An inhabitant of the town of Enfield, Greenwich or Prescott, when annexed to an adjacent town by authority of this act, who remains upon the annexed territory, or who removes to a place within the limits of the town to which the land upon which he resided has been annexed, as such limits existed prior to such annexation, shall have the same right to vote at a town meeting in such town, or at an election of town officers, that he would have had if the annexed territory had constituted a part of said town for six months prior to such meeting or election.

SECTION 17. During any interval between the annexation of said towns of Enfield, Greenwich and Prescott and the taking possession of the land taken therein by the commission under this act, the commission shall maintain the public ways, public schools and other public works and public institutions in said towns to such extent and in such manner as the commission may deem necessary for the convenience, comfort and welfare of the inhabitants remaining therein.

SECTION 18. No person shall acquire against the commonwealth any rights by prescription or adverse possession in any lands or rights in lands of the commonwealth

acquired by the commission under the provisions of this act or of chapter three hundred and seventy-five of the acts of nineteen hundred and twenty-six.

SECTION 19. The commission may at any time sell at public or private sale, or exchange or lease any property, real or personal, or any easement or water right including any land in new cemeteries provided for in section nine of this act, whether taken by eminent domain or otherwise acquired, which in the opinion of the commission is no longer needed for the purposes of this act. Any sums of money so received shall be applied by the state treasurer to construction costs or to reduce the bonded indebtedness for the works. The commission, and after said works have been turned over to the metropolitan district commission, the metropolitan district commission, may by lease, license or contract permit the construction and maintenance on or over any land or waters under its control, of towers, poles, wires and other structures for the purpose of transmitting electric power, and may construct, maintain and operate such power plants and other structures as may in its opinion be necessary to utilize the fall of water created at any of the dams, channels, tunnels, or other structures under its control, for the production of power or electricity; may locate, construct and maintain lines for transmitting the same; and may use, sell or contract for the sale or use of any power or electricity so created, and any sums of money so received shall be applied to reduce the charges of maintenance of the metropolitan water district.

SECTION 20. The provisions of sections six and seven of chapter fifty-nine of the General Laws shall be applicable to land acquired in fee by the commission under this act for reservoir purposes or for the protection of the reservoir except to land within the present limits of the towns of Enfield, Greenwich and Prescott. On

the land in these three named towns acquired previous to the date of their annexation, the commission shall pay to each said town in which the respective land is located until such time as the annexation of said town, as provided in section thirteen of this act, a sum in lieu of taxes computed and paid as provided in said sections six and seven of said chapter fifty-nine, but including for this period the buildings and structures thereon. Subsequent to said annexation neither the commission nor the metropolitan district commission shall pay any taxes or make any payments in lieu of taxes on land or buildings within the present limits of the said towns of Enfield, Greenwich and Prescott.

As full compensation for any loss of taxation or any other loss caused by the carrying out of the provisions of this act, the commission shall pay to the county of Hampshire the sum of fifty-five thousand dollars, which sum shall be paid at the time of the annexation of the towns of Enfield, Greenwich and Prescott to adjacent towns.

SECTION 21. Whenever by the provisions of this act the commission is required to make annual payments over a period of years, it may by agreement with the parties interested make a settlement by payment of a liquidated amount, if it deems it advisable so to do.

SECTION 22. Any town or fire or water district on the water shed of the Swift river may take from this river above any dam constructed under this act across said river so much of the water thereof as it has already been or may hereafter be authorized by the legislature to take for supplying its inhabitants with water, and in case any such town or district shall hereafter on its application therefor be authorized to take such water, the point of connection with and entrance into said river or any pond, reservoir or waters thereof and the location of any pipes, aqueducts, conduits, wells or other water courses laid or

constructed on land of the commonwealth shall be determined by agreement between such town or district and the metropolitan district commission, and such town or district shall pay to the commonwealth for the account of the metropolitan water district, all damages to the land, structures or other property of the commonwealth caused by such taking, connection or entrance; and it shall further pay to the commonwealth for the account of the metropolitan water district, a fair proportion of the cost incurred by the commonwealth for the acquisition under the provisions of this act of the waters of said river, or rights therein, and for the construction, maintenance and operation of such works and structures as are authorized by this act, including a fair proportion of the cost of maintaining the purity of said water, the said damages and proportion to be determined by the metropolitan district commission and by such applicant town or district, and, if they cannot agree, such damages and proportion shall be determined by a master to be appointed by the supreme judicial court on petition by the commonwealth or said applicant town or district, and the report of the master, when affirmed by said court, shall be final and conclusive upon all parties.

SECTION 23. No persons shall, after the passage of this act, erect a dam for mill purposes across the Swift river, or any of its tributaries above the village of Bondsville, without the consent in writing of the commission, or, after said works have been turned over to the metropolitan district commission, of said metropolitan district commission. In granting its consent, either commission may impose such conditions as it may deem to be for the public interest. Any person who is constitutionally damaged in his property by the refusal of such consent or by the imposition of such conditions, may recover from the commonwealth the damage so caused in the manner provided in section four of this act.

SECTION 24. The supreme judicial court or any justice thereof and the superior court or any justice thereof, during a sitting of the court or in vacation, on the petition of the commission or of any city, town, corporation or person interested, or of the attorney of any such petitioner, shall have jurisdiction in equity or otherwise to enforce the provisions of this act and of any rule, regulation or order made under the authority of the same and to prevent any violation of said provisions, rules, regulations or order; provided, however, that no suit in which the right of the commission to make any taking authorized by this act is questioned shall be brought except in the supreme judicial court for the county in which said taking has been made or is to be made, nor unless the said suit is brought within six months after the passage of this act.

If any part, subdivision or section of this act shall be declared unconstitutional the validity of its remaining provisions shall not be affected thereby.

SECTION 25. All general laws relating to the water supplies of cities and towns or the lands and other property used for such supplies and the provisions of sections ten to twenty-three, inclusive, of chapter ninety-two of the General Laws shall in so far as they are not inconsistent with the provisions of this act apply to and be observed in carrying out the purposes of this act. The provisions of chapter three hundred and seventy-five of the acts of nineteen hundred and twenty-six shall continue in force except as modified by the provisions of this act, but nothing in this act shall be held to authorize any taking or diversion of the waters of the Ware river in excess of that authorized under the provisions of said chapter three hundred and seventy-five of the acts of nineteen hundred and twenty-six.

SECTION 26. Any church or religious society established in the towns of Dana, Enfield, Greenwich, New Salem or Prescott may within five years from the

passage of this act file in the probate court or in the supreme judicial court for the county in which such town is located a petition in equity representing that by reason of the construction of the reservoirs and other works contemplated by this act it will be impracticable for such church or religious society thereafter to continue its services of worship or otherwise to carry out the purposes for which it was established and thereupon, after such notice to the attorney general and other persons interested as the court in which such petition is filed may direct, said court may authorize such church or religious society to convey by deed all property real and personal held by it for its own purposes or upon any trust (including the beneficial interest in any trust property held for the benefit of such church or religious society, also any and all contingent rights and interests and any right to damages vested in such church or religious society under the terms of chapter three hundred and seventy-five of the acts of nineteen hundred and twenty-six or under the terms of this act) to such appropriate person or corporation as the court may determine, to be held and administered by such person or corporation in such manner and upon such trusts as the court may designate and may further direct that upon the making of such conveyance and upon the filing of a certified copy of the deed and of the decree authorizing the same in the office of the secretary of the commonwealth such church or religious corporation shall be deemed to be dissolved. If any property conveyed pursuant to a decree entered upon such petition shall thereafter be taken under the provisions of either of said acts, the person or corporation to which such property shall have been so conveyed shall have the same right to damages as such church or religious society would have had if it had not conveyed such property. Before entering a decree as hereinbefore pro-

vided, the court shall ascertain whether any rights by way of reverter or otherwise are vested in any person or corporation in any property held by or for the benefit of such church or religious society upon the dissolution of such church or religious society, the discontinuance of its activities, its ceasing to use said property or any other contingency, and, if it shall appear that a conveyance of any such property as hereinbefore provided would be inconsistent with any such rights, the court, if any action appears to be necessary in order to effect a lawful and complete disposition of such property, shall direct that the same be conveyed to the person or corporation found to be entitled thereto in the existing state of things or devise a plan for the application thereof in a manner consistent with such rights. The remedies hereby given shall be in addition to any remedies afforded by existing law.

SECTION 27. For the purpose of carrying out the provisions of this act, the commission may expend such amounts not exceeding in the aggregate fifty million dollars, as may from time to time be approved by the governor and council. To meet such expenditures, the state treasurer shall, from time to time, on the request of the commission and subject to such approval, issue bonds of the commonwealth to an amount not exceeding the sum of fifty million dollars, which shall be a further addition to the loans authorized by section eight of chapter three hundred and seventy-five of the acts of nineteen hundred and twenty-six, and by section six of chapter one hundred and eleven of the acts of nineteen hundred and twenty-seven.

Such bonds shall be issued as coupon or registered bonds, for such term of years as may be recommended by the governor, in accordance with section three of Article LXII of the amendments to the constitution, and shall bear interest at such rate as shall be fixed by

the state treasurer, with the approval of the governor and council. The amounts necessary to meet interest and serial payment requirements on said bonds and the expenses of maintaining and operating the works to be constructed by the commission under this act, and such other expenses as may be authorized hereunder, shall be added to the annual assessments upon the cities and towns comprising the metropolitan water district and apportioned and collected as provided by section twenty-six of chapter ninety-two of the General Laws.

Approved April 26, 1927.